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# New Jersey Statutes Annotated

## Title 34, Chapter 8

### Employment and Personnel Services

#### 34:8-43. Definitions

As used in this act:

“Accepting employment” means that a job seeker has entered into an agreement with an employer which includes:

- (1) The terms and conditions of employment;
- (2) The salary or wages and any benefits to be paid to the job seeker as compensation for employment; and
- (3) The date, time and place employment will commence.

“A career consulting or outplacement organization” means any person, required to be registered under section 24 of this act,<sup>1</sup> providing or rendering services, with or without related products, in connection with advice, instruction, analysis, recommendation or assistance concerning past, present, or future employment or compensation for an individual’s time, labor or effort.

“Agent” means any individual who performs any function or activity for or on behalf of any person, the purpose of which is to provide services or products to individuals seeking employment, career guidance or counseling, or employment related services or products.

“Applicant” means any person applying for licensing or registration under this act.

“Attorney General” means the Attorney General of this State or a designee.

“Baby sitter” means and includes any individual under 16 years of age, other than a registered nurse or a licensed nurse, entrusted temporarily with the care of children during the absence of their parents, guardians, or individuals standing in loco parentis to them. This definition shall not include persons regularly employed by agencies, or institutions operated by or under the control or supervision of this State, or any of its political subdivisions, nor any child care facilities operated for the care of children when the facilities are similarly controlled or supervised.

“Booking agency” means any person who procures, offers, promises, or attempts to procure employment for performing artists, or athletes, not under the jurisdiction of the Athletic Control Board, and who collects a fee for providing those services.

“Bureau” means the Bureau of Employment and Personnel Services in the Division of Consumer Affairs within the Department of Law and Public Safety created pursuant to section 2 of this act.<sup>2</sup>

“Career counseling service” means any business that, through its agents or otherwise, procures or represents itself as procuring employment or employment assistance or advertises in any manner the following services for a fee: career counseling; vocational guidance; aptitude, achievement or vocational testing; executive consulting; personnel consulting; career management, evaluation, or planning; the development of resumes and other promotional materials relating to the preparation for employment; or referral services relating to employment or employment qualifications. A career counseling service shall be licensed as an employment agency pursuant to the provisions of this act. A career counseling service shall not include career consulting or outplacement organizations required to be registered under section 24 of this act.

“Chief” means the Chief of the Bureau of Employment and Personnel Services.

“Consulting firm” means any person required to be registered under section 23 of this act<sup>3</sup> that:

- (1) Identifies, appraises, refers or recommends individuals to be considered for employment by the employer; and
- (2) Is compensated for services solely by payments from the employer and is not, in any instance, compensated, directly or indirectly, by an individual who is identified, appraised, referred or recommended.

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, or his designee.

“Employer” means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wage, or other compensation or benefits are to be paid.

“Employment agency” means any person who, for a fee, charge or commission:

- (1) Procures or obtains, or offers, promises or attempts to procure, obtain, or assist in procuring or obtaining employment for a job seeker or employees for an employer; or
- (2) Supplies job seekers to employers seeking employees on a part-time or temporary assignment basis who has not filed notification with the Attorney General pursuant to the provisions of section 1 of P.L.1981, c. 1 (C.56:8- 1.1); or
- (3) Procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models; or
- (4) Acts as a placement firm, career counseling service, or resume service; or
- (5) Acts as a nurses’ registry.

The director shall have the authority to determine, from time to time, that a particular employment agency or career-related service or product, not otherwise expressly subject to the provisions of this act, is subject to whichever requirements of this act he deems appropriate.

“Fee, charge or commission” means any payment of money, or promise to pay money to a person in consideration for performance of any service for which licensure or registration is required by this act, or the excess of money received by a person furnishing employment or job seekers over what he has paid for transportation, transfer of baggage or lodging for a job seeker. “Fee, charge or commission” shall also include the difference between the amount of money received by any person who either furnishes job seekers or performers for any entertainment, exhibition or performance, or who furnishes baby sitters for any occasion, and the amount paid by the person to the job seekers, performers or baby sitters.

“Job listing service” means any person required to be registered under section 25 of this act<sup>4</sup> who, by advertisement or other means, offers to provide job seekers with a list of employers, a list of job openings or a similar publication, or prepares resumes or lists of applicants for distribution to potential employers, where a fee or other valuable consideration is exacted or attempted to be collected, either directly or indirectly.

“Job seeker” means any individual seeking employment, career guidance or counseling or employment related services or products.

“Job seeker contingent liability” means a provision in an agreement between an employment agency and a job seeker whereby the job seeker may become liable, in whole or in part, to pay a fee, charge or commission of any amount, directly or indirectly, on account of any service rendered by the employment agency.

“Just cause for voluntary termination of employment by a job seeker” means and includes, but is not limited to, cases in which material misrepresentations of the terms or conditions of employment have been relied upon by a job seeker who would not have accepted the employment if the grounds for termination were known before acceptance of the employment.

“License” means a license issued by the director to any person to:

- (1) Carry on the business of an employment agency; and
- (2) Perform, as an agent of the agency, any of the functions related to the operation of the agency.

“Performing artist” means a model, musical, theatrical or other entertainment performer employed or engaged individually or in a group.

“Person” means any natural person or legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

“Prepaid computer job matching service” means any person required to be registered under section 25 of this act who is engaged in the business of matching job seekers with employment opportunities, pursuant to an arrangement under which the job seeker is required to pay a fee in advance of, or contemporaneously with, the supplying of the matching, but which does not otherwise involve services for the procurement of employment by the person conducting the service.

“Primary location” means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under this act.

“Principal owner” means any person who, directly or indirectly, holds a beneficial interest or ownership in an applicant or who has the ability to control an applicant.

“Temporary employment” means employment in which the duration is fixed as some definite agreed period of time or by the occurrence of some specified event, either of which shall be clearly stated to all parties at the time of referral to the employment.

“Temporary help service firm” means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the customers’ temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays federal social security taxes and State and federal unemployment insurance; carries worker’s compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm’s customers. A temporary help service firm is required to comply with the provisions of P.L.1960, c. 39 (C.56:8-1 et seq.).

<sup>1</sup> Section 34:8-65.

<sup>2</sup> Section 52:17B-139.4.

<sup>3</sup> Section 34:8-64.

<sup>4</sup> Section 34:8-66.

**34:8-44. Disclosure statement of conviction of crime by applicants; filing with chief; use to deny licensure or registration; hearing**

In addition to any other procedure, condition or information required by this act:

- a. Every applicant shall file a disclosure statement with the chief stating whether or not the applicant has been convicted of any crime, which for the purposes of this act shall mean a violation of any of the following provisions of the “New Jersey Code of Criminal Justice,” Title 2C of the New Jersey Statutes as amended and supplemented, or the equivalent under the laws of any other jurisdiction:

- (1) Any crime of the first degree;

- (2) Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or
  - (3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, 2C:14-2, 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of 2C:17-2, 2C:18-2, 2C:20-1, 2C:20-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2 through 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-19, chapter 27 or 28 of Title 2C of the New Jersey Statutes, N.J.S.2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, or 2C:37-1 through 2C:37-4.
- b. Each disclosure statement may be reviewed and used by the director as grounds for denying licensure or registration, except that in cases in which the provisions of P.L.1968, c. 282 (C.2A:168A-1 et seq.) apply, the director shall comply with the requirements of that act.
  - c. An applicant who is denied licensure or registration pursuant to this section shall, upon a written request transmitted to the director within 30 calendar days of the denial, be afforded an opportunity for a hearing in the manner provided for contested cases pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.).
  - d. An applicant shall have the continuing duty to provide any assistance or information requested by the director, and to cooperate in any inquiry, investigation, or hearing conducted by the director.
  - e. If any of the information required to be included in the disclosure statement changes, or if any additional information should be added after the filing of the statement, the applicant shall provide that information to the chief, in writing, within 30 calendar days of the change or addition.

**34:8-45. Application of act to persons in activities regulated by act; licensure or registration precondition to action for fee, charge or commission**

- a. The provisions of this act shall apply to any person engaging in any of the activities regulated by this act including persons whose residence or principal place of business is located outside of this State.
- b. A person shall not bring or maintain an action in any court of this State for the collection of a fee, charge or commission for the performance of any of the activities regulated by this act without alleging and proving licensure or registration, as appropriate, at the time the alleged cause of action arose.

**34:8-46. Exemptions**

The provisions of this act shall not apply to:

- a. A teachers' registry conducted by an association of certified teachers, whose membership is not less than 10 certified teachers, incorporated as a non-profit organization under the laws of New Jersey, and operated under the supervision of a teacher recognized and approved as a certified teacher by the Department of Education of this State, or by the duly established authority of the state in which the employment is procured, which registry procures positions only for certified teachers who are recognized and approved as certified teachers by the Department of Education of this State;
- b. Any State, federal, municipal or charitable agency which does not charge fees;
- c. Any department or bureau which is maintained by persons for the purpose of securing help for themselves and does not charge fees to job seekers. The exemption from the provisions of this act provided by this subsection shall not be construed to exempt associations or organizations of employers from the requirement to procure the licenses or registration otherwise required under this act;
- d. The procuring of employment by any labor union for any of its members in any job coming under the jurisdiction of the union; provided, that no fee is charged any member for being furnished employment or information where employment may be procured;
- e. Any nurses' registry operated by any association of registered nurses, whose membership is not less than 10 registered nurses, duly incorporated as a nonprofit organization under the laws of New Jersey, and operated under the supervision of a registered nurse authorized to practice in the State of New Jersey; except that no nurses' registry shall furnish help or employment to anyone other than a registered nurse, a practical nurse licensed by the State, or a person, other than a baby sitter, who is approved by the registered nurse in charge of the nurses' registry and is sent by the agency to an employer to assist nonprofessionally in the care of the sick or ailing;
- f. Any association of farmers which:
  - (1) Is duly incorporated on a nonprofit basis, under the laws of New Jersey;
  - (2) Is certified to the director by the Secretary of Agriculture of New Jersey as being an association of bona fide farmers of New Jersey;
  - (3) Does not furnish job seekers to employers other than members of their association; and
  - (4) Does not charge fees to any job seeker for being furnished employment or information where employment may be procured.
- g. Any person who furnishes farmers with field or harvest workers to be employed on a seasonal basis, and charges no fee either directly or indirectly to any worker, if the wages of the workers are paid directly to the workers by the farmers who employ them.

The exemptions established in this subsection and subsection f. of this section shall not apply to any person who induces or attempts to induce a person working under contract with an employer to leave the employment in which he is working under that contract before the contract is completed or the worker is no longer responsible for its completion;

- h. Any temporary help service firm which does not:
  - (1) Charge a fee or liquidated charge to any individual employed by the firm or in connection with employment by the firm;
  - (2) Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person;
  - (3) Knowingly send individuals it employs to, or knowingly continue to render services to, any plant or office where a strike or lockout is in progress for the purpose of replacing individuals who are striking or who are locked out. Any person conducting a temporary help service firm which knowingly sends its employed individuals to, or knowingly continues to render services to, a plant or office where a strike or lockout is in progress for the purpose of replacing those individuals who are striking or who are locked out or, directly or indirectly counsels, aids or abets that action shall be liable to a penalty of \$1,000 upon each occurrence. The penalty shall be sued for, and received by and in the name of the Attorney General and shall be collected and enforced by summary proceedings pursuant to “the penalty enforcement law” (N.J.S.2A:58-1 et seq.).

This exclusion shall apply to temporary help service firms operated by any person who also operates an employment agency as long as the businesses are independently operated as prescribed by rules and regulations promulgated by the Attorney General.

- i. Any news periodical which contains listings of or classified advertisements for jobs, positions, employers, or job seekers where the periodical also contains news stories of general interest, articles or essays of opinion, features and other advertising and which is offered to the general public for sale at a nominal fee;
- j. Any nonprofit educational, religious or charitable institution which provides career counseling, job placement or other employment-related services, skills evaluation, skills analysis, or testing for vocational ability in order to develop a vocational profile to counsel individuals and recommend placement opportunities as part of the fulfillment of its educational, religious or charitable purpose;
- k. Any copying, printing, duplicating or resume preparation service which in no instance charges a fee, directly or indirectly, for providing any



employment-related service other than copying, printing, duplicating or assisting in arranging the layout of a resume.

**34:8-47.           Employment agency license; application; issuance and form; transfer or amendment; expiration of license**

- a. An application for an employment agency license required by this act shall be made in writing to the chief in the form prescribed by the director. The application shall state the complete address, including street and number, of the building and place where the agency is to be conducted and shall enumerate the types of services which the applicant intends to provide. The applicant shall furnish any additional information as may be required by the director for the purpose of investigating the character and responsibility of the applicant and its principal owners or its officers and directors.
- b. The chief shall act upon any application for a license within 30 days after receiving it, except that the director may extend the maximum time for acting upon an application to 60 days for the purpose of allowing an applicant to submit additional information or if a hearing on an application is required.
- c. The director shall provide for the issuance of, and shall prescribe the form for, the licenses to be issued pursuant to this act.
- d. An employment agency license shall not be transferred by the licensee to another person or amended without the written consent of the director and the payment of the fee prescribed by this act.
- e. All licenses shall expire on January 1 of the year following their issuance.

**34:8-48.           Agent's license; application; confirmation of employment by agency; qualifications; cancellation and notice on termination of employment; reinstatement with other agency; conditional license; posting; identification cards; expiration of license**

- a. An application for an agent's license shall state the name and address of the applicant and any other name used by the applicant in the last six years, the name of the holder of the employment agency license by whom the applicant expects to be employed, and any other information concerning the applicant required by the chief to assist in the determination of the applicant's qualifications to provide the services for which the applicant would be licensed.
- b. An agent's license shall not be issued until the holder of the employment agency license named in the application confirms to the chief in writing that the applicant is or will be employed by the employment agency. A license issued to an agent of an employment agency shall not authorize employment by any other employment agency.

- c. An applicant for an agent's license under this act shall, by means of whatever written examination is required by the director, reasonably satisfy the chief that the applicant:
  - (1) Has knowledge of the provisions of this act and applicable rules and regulations which is sufficient to ensure that the applicant is able to comply with the applicable laws and regulations; and
  - (2) Has knowledge of and experience in the fields of employment specified in the application which is sufficient to ensure that the applicant is able to render adequate and efficient service to job seekers.
- d. An applicant for an agent's license shall furnish information which will reasonably satisfy the chief that the applicant has sufficient knowledge of employment opportunities, career guidance or counseling, or employment-related services or products which the applicant intends to provide to job seekers.
- e. Upon the termination of the employment of the holder of an agent's license, the holder of the employment agency license by whom the holder of the agent's license has been employed shall promptly notify the chief of the termination of employment. The agent's license shall thereupon be canceled and the agent entitled to the issuance of a new license for the unexpired term of the old license without payment of an additional fee upon the written request of the agent, and the holder of the employment agency license who is to be named in the new license as the new employer, except that the director may refuse to issue the new license for any good cause shown within the provisions of this act.
- f. For the purpose of enabling individuals to secure experience and knowledge necessary to qualify them as an agent, the director may waive any of the requirements of this section which the director deems proper and issue a conditional license authorizing the holder to perform functions requiring a license, when acting under the direct supervision of a duly qualified licensed agent. The conditional license shall remain in effect for not more than one year.
- g. The director shall provide for the issuance of, and shall prescribe the form for, the licenses authorized to be issued pursuant to this act.
- h. The director may require licenses to be posted and identification cards to be carried.
- i. All licenses shall expire on January 1 of the year following their issuance.

**34:8-49.           Bond for employment agency license**

- a. Before an employment agency license is issued, the applicant shall post with the director a bond in the amount of \$10,000, with a duly authorized surety company as surety, to be approved by the director.
- b. The bond shall be retained by the chief until 90 days after either the expiration or revocation of the employment agency license, as appropriate.
- c. The bond shall be payable to the State of New Jersey and upon the condition that the person applying for the license will comply with this act and will pay all damages occasioned to any person by reason of any misrepresentative, deceptive, or misleading act or practice, or any unlawful act or omission of any licensed person, agents, or employees, while acting within the scope of employment, made, committed or omitted in the business conducted under the license, or caused by any violation of this act in carrying on the business for which the license is granted.
- d. In case of a breach of the condition of any bond, application may be made to the director by the person injured by the breach for leave to sue upon the bond, which shall be granted by the director if it is proven that the condition of the bond has been breached and that the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in the person's name for the recovery of damages sustained by the breach.
- e. If at any time, in the opinion of the director, the surety on any bond shall become irresponsible, the person holding the license shall, upon notice from the director, give a new bond, subject to the provisions of this section. The failure to give a new bond within 10 days after notice, at the direction of the director, shall operate as revocation of the license, and the license shall be returned to the director.

**34:8-50.           Fees for licenses**

Any license issued in accordance with this act shall be issued upon an annual basis. The fees therefor shall be nonrefundable and shall be charged as follows:

- a. Employment agency license ..... \$250
- b. Agent's license ..... 25
- c. Transfer of agent's license ..... 10

**34:8-51.           Duties and obligations of employment agencies**

- a. Every employment agency shall:
  - (1) Keep and make available to the chief, or a designee, during regular business hours, records containing information regarding services pro-

vided, products sold to job seekers or employers, and fees charged or collected, and other information required by rules and regulations to enable the chief to determine the status of compliance with the provisions of this act;

- (2) Require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the agency subject to examination by the chief. If the employer voluntarily waives, in writing, a verification of references, the licensed agency shall not be required to make the verification;
- (3) Give to each job seeker a copy of every writing the job seeker has signed, the form of which complies with P.L.1980, c. 125 (C.56:12-1 et seq.).
- (4) Furnish to each job seeker, who is sent to a prospective employer for an interview concerning the job seeker's qualifications or future employment in a job for which no order has been given to the agency, a card or paper containing the names of the job seeker and prospective employer, the address of the prospective employer and any other particulars the agency may determine are necessary. In each case, there shall be printed in bold-faced type on the card or paper the following:  
"This card of introduction is given to (name of job seeker) with the understanding that there is no obligation to this employment agency for any fee until, as a result of the services rendered by this agency, (name of job seeker) is employed in a job with respect to which the agency received a bona fide order from an employer. (name of job seeker) has agreed to pay the fee under the foregoing conditions if the fee is not paid by an employer."
- (5) Post in the agency in the places that the chief, or a designee, directs, an abstract of this act and the rules and regulations promulgated by the director. The chief shall provide the abstracts and charge for the printing of these abstracts.

- b. In addition to the requirements set forth in subsection a., each employment agency which charges or may charge the job seeker a fee shall:
- (1) File with the chief, for the chief's approval, a schedule of fees proposed to be charged for any service rendered or product sold to job seekers and adhere to the schedule in charging for these services or products. The chief shall not approve the fee schedule unless the chief is satisfied that the fee schedule is on a form which makes the schedule reasonably understandable by job seekers and that the fee schedule is in compliance with all other provisions of this section. The schedule of fees may thereafter be changed or supplemented, by filing an amended or supplemental schedule with the bureau. The changes shall not become effective until approval has been granted by the chief and the amended or supplemental fee schedule has been posted for not less than seven days in a conspicuous manner in the office of the agency. It shall be unlawful for any employment agency to charge, demand, collect or receive a greater fee for any service rendered or product sold to a job seeker than is specified in the most recent schedule filed with the bureau;
  - (2) Post the schedule of fees in a conspicuous manner in the office of the agency using forms provided by the chief;
  - (3) Compute fees paid by a job seeker seeking employment on the basis of permanent employment, unless the employment is temporary employment. Where temporary employment merges into permanent employment, or where a job seeker accepts permanent employment within 30 days after the termination of temporary employment, the permanent employment may be considered the result of the references to the temporary position and the fee may be based on the permanent employment with due credit given for the payment made for the temporary employment;
  - (4) Not charge to a job seeker who obtains employment and who is discharged without cause or who voluntarily terminates employment for just cause more than 1% of the scheduled fee for each day worked. For purposes of this paragraph, the employment agency shall repay to any job seeker so discharged or terminated any excess of the maximum fee in accordance with the fee schedule, allowing three days' time to determine that the termination was not due to any fault on the part of the job seeker. The employment agency may, however, by separate written agreement between the employment agency and the job seeker, retain the fee or any part of the fee which has been paid for the job from which the job seeker has been discharged without cause or terminated, if the agency furnishes the job seeker with another job and allows due credit for the retained payment;

- (5) Not charge a job seeker who either fails to report for duty after accepting employment or voluntarily terminates employment without just cause within 30 days more than 30% of the scheduled fee;
- (6) Obtain a bona fide order for employment prior to collecting any fee from a job seeker or sending out a job seeker to any place of employment. Except as may be otherwise provided in rules and regulations, no charge or advance fee of any kind shall be charged, demanded, collected, or received by the agency from a job seeker seeking employment until employment has been obtained by or through the efforts of the agency;
- (7) Give to every job seeker from whom a fee is received, at the time payment is received, a receipt which shall state the name of the job seeker, the name and address of the employment agency and its agent, the date and amount of the fee and the purpose for which it was paid; and
- (8) Furnish each job seeker, who is sent to a prospective employer, with a card or similar paper containing the nature of the prospective employment, the names of the job seeker and prospective employer, and the address of the employer.

#### 34:8-52. Prohibited acts

It shall be a violation of the provisions of this act for any person to:

- a. Open, conduct, or maintain, either directly or indirectly, an employment agency or perform any of the functions of an employment agency without first obtaining a valid employment agency license from the director and complying with all requirements of this act regarding agents' licenses for the agents of the agency. A license shall not authorize the furnishing of help or employment or the furnishing of information where help or employment may be procured in the capacity of baby sitters. A license shall not authorize activities of any person other than the individual person or persons holding the license, except that a corporation may be the holder of an employment agency license. A license shall not authorize activities at any place other than the place designated in the license except upon issuance of a special permit by the director. A licensee may engage in activities requiring registration under sections 23, 24 and 25 of this act<sup>1</sup> if it complies with the requirements of those sections.
- b. Conduct business, or any phase thereof, in any room or place where:
  - (1) An individual sleeps or conducts his or her household affairs, unless the business premises have separate ingress and egress from the residential premises;

- (2) Premises are rented or leased on an hourly, daily, weekly, or other transient basis except as otherwise provided by regulation;
- c. Charge or accept payment of any fees which are greater than those shown by any schedule of fees which is required to be filed with the chief and posted in the agency;
  - d. Accept and receive any gift as, or in lieu of, a fee;
  - e. Divide or offer to divide fees, directly or indirectly, with prospective or actual employers or any agent, employee, or representative;
  - f. Accept payment of a fee or attempt to collect any fee for a service rendered or product sold where employment has not been accepted, except that the requirements of this subsection shall not apply to any career counseling service if that service receives no prepayment for services or products and provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for the services or products rendered;
  - g. Falsely state or imply to a job seeker that the person is seeking to obtain individuals to perform services, tasks or labor for which salary, wages, or other compensation is to be paid;
  - h. Send or cause to be sent any individual to any place used for unlawful purposes;
  - i. Place or assist in placing an individual under 18 years of age into employment which is in violation of the laws of this State;
  - j. Induce or compel any individual to enter the agency, for any purpose, by the use of force or by taking forcible possession of the individual's property;
  - k. Publish or cause to be published any deceptive or misleading notice or advertisement. All advertisements of any agency by any means, including, but not limited to, cards, circulars or signs, or in newspapers and other publications, and all letterheads, receipts and blanks, shall contain the name and address of the agency;
  - l. Make a deceptive or misleading representation to a job seeker or employer, or enter into any contract with any job seeker or employer or induce or attempt to induce any job seeker or employer to make any agreement, the provisions of which contract or agreement, if fulfilled, violate this act;
  - m. Require that a job seeker enter into a contract with the agency or any specific lender for the purpose of fulfilling a financial obligation to the employment agency;
  - n. Demand, charge, collect, or receive a fee unless in accordance with the terms of a written contract or agreement with a job seeker;

- o. Engage in any act or practice in violation of P.L.1960, c. 39 (C.56:8-1 et seq.) and regulations promulgated thereunder.

<sup>1</sup> Sections 34:8-64 to 34:8-66.

### **34:8-53. Refusal to issue, revocation or suspension of license**

The director may refuse to issue, and may revoke, any license for failure to comply with, or violation of, the provisions of this act or for any other good cause shown, within the meaning and purpose of this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or licensee. The director may, if he finds it to be in the public interest, suspend a license for any period of time that he determines to be proper or assess a penalty in lieu of suspension, or both, and may issue a new license, notwithstanding the revocation of a prior license, provided that he finds the applicant to have become entitled to the new license.

### **34:8-54. Powers of director**

To accomplish the objectives and carry out the duties prescribed by this act, the director may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, promulgate rules and regulations, and prescribe forms as may be necessary.

### **34:8-55. Investigation of violations or unlawful practices**

Whenever it appears to the director that a person has engaged in, is engaging in, or is about to engage in, any practice declared to be unlawful by this act, or whenever the director believes it to be in the public interest that an investigation should be made to ascertain whether a person has engaged in, is engaging in, or is about to engage in, any unlawful practice, the director may:

- a. Require the person to file, on forms prescribed by him, a written statement or report, under oath or otherwise, concerning the facts and circumstances regarding the practice which is under investigation;
- b. Examine under oath any person in connection with the practice under investigation;
- c. Examine any record, book, document, account, contract, or paper as he deems necessary; and
- d. Pursuant to an order of the Superior Court, impound any record, book, document, account, contract, or paper that is produced in accordance with this act, and retain it until the completion of all proceedings in connection with the materials produced.



### 34:8-56. Service of notice to file statement or report or of subpoena

Service by the director of any notice requiring a person to file a statement or report, or of a subpoena upon the person, shall be made personally within this State, but if this cannot be done, substituted service may be made in the following manner:

- a. Personal service outside this State;
- b. The mailing by registered or certified mail to the last known place of business or residence inside or outside the State of the person;
- c. As to any person other than an individual, in accordance with the Rules Governing the Courts of the State of New Jersey pertaining to service of process, provided, however, that service shall be made by the director; or
- d. Any service as the Superior Court may direct in lieu of personal service within the State.

### 34:8-57. Failure or refusal to file statement or report or obey subpoena; order of court

If a person fails or refuses to file any statement or report requested by the director, or obey any subpoena issued by the director, the director may seek and obtain an order from the Superior Court:

- a. Adjudging the person in contempt of court;
- b. Granting injunctive relief, without notice, restraining any and all acts and practices for which a license is required in the provisions of this act;
- c. Directing the payment of reasonable attorneys' fees and costs of the investigation and suit; and
- d. Granting any other relief as may be required, until the person files the statement or report, or obeys the subpoena.

### 34:8-58. Violations; injunctions; other remedies

- a. Whenever it appears to the director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of this act, the director may seek and obtain in a summary action in the Superior Court an injunction prohibiting the person from continuing the practices or engaging therein or doing any acts in furtherance thereof.
- b. In addition to any other remedy, the court may: enjoin an individual from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member of any executive board or similar governing body, principal, manager, stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State; vacate or annul the charter of a corporation created by or under the laws of this State; revoke the certificate of

authority to do business in this State of a foreign corporation; and revoke any licenses issued pursuant to law to the person whenever the charter, authority, or license have been or may be used to engage in or to further unlawful practices. The court may grant any relief as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practices declared to be unlawful.

### **34:8-59. Practices in violation of act; hearings; order by commissioner**

Whenever it appears to the director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of this act, the director may hold hearings on the violation and upon finding the violation to have been committed, may enter an order:

- a. Directing the person to cease and desist or refrain from committing the practice in the future;
- b. Directing the person to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any unlawful practice;
- c. Assessing reasonable attorneys' fees and costs of investigation and suit;
- d. Assessing a penalty in the amount authorized by the provisions of section 19 of this act,<sup>1</sup> which the director deems proper under the circumstances; and
- e. Directing the person to reimburse the job seeker for transportation expenses if no employment of the kind applied for exists at the place to which the job seeker is sent and the person did not have a bona fide order, either oral or written, from the prospective employer.

<sup>1</sup> Section 34:8-60.

### **34:8-60. Violation of cease and desist order; penalties or other relief**

Whenever it appears to the director that a person against whom a cease and desist order has been entered has violated the order, the director may bring a summary proceeding in the Superior Court based upon the violation. A person found to have violated a cease and desist order shall be liable for civil penalties in the amount of not less than \$1,000 or more than \$25,000 for each violation of the order, together with reasonable attorneys' fees and cost of investigation and suit. If any person fails to pay a civil penalty imposed by the court for violation of a cease and desist order, the court imposing the penalty is authorized, upon application of the director, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

**34:8-61. Penalties for violations**

In addition to any other penalty provided by law, a person who violates any of the provisions of this act shall be liable for a penalty of not more than \$2,000 for the first offense and not more than \$5,000 for the second and each subsequent offense.

**34:8-62. Attorneys' fees and costs of investigation and suit**

In any action or proceeding brought under this act the director may recover reasonable attorneys' fees and costs of investigation and suit.

**34:8-63. Failure to comply with order of director to pay; certificate of indebtedness to state; service; entry on record of docketed judgments**

Upon the failure of a person to comply within 10 days after service of any order of the director directing payment of penalties, costs, attorneys' fees, reimbursement, or restoration of moneys or property, the director may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for these payments. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, a designation of the statutes under which the payments are imposed, the amount of each payment imposed, and a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry of the docketed judgment in the Superior Court. The entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the director.

**34:8-64. Consulting firms; registration; annual fee; prohibited acts; refusal to issue, revocation or suspension; authorized activities; violations**

- a. Every consulting firm operating within this State shall, within 60 days following the effective date of this act and annually thereafter, register in writing with the chief on a form prescribed by regulation.
- b. Each registration form shall state the firm's name, and any fictitious or trade name used in its operation, each primary location, including street and street number of the building and place where its business is to be conducted, and the names and residence addresses of its principal owners or officers.
- c. The director shall establish by rule and collect an annual fee from firm registrants, which shall not be more than the fee paid by employment agencies, to be used to the extent necessary to defray expenses incurred by the bureau in the performance of its duties under this section.

- d. In addition to any act or practice in violation of P.L.1960, c. 39 (C.56:8- 1 et seq.), it shall be a violation of this act for any registrant or its agent to:
  - (1) Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representation concerning the services or products that the registrant provides to job seekers.
  - (2) Disseminate information to a job seeker knowing or recklessly disregarding information that:
    - (a) The job does not exist or the job seeker is not qualified for the job;
    - (b) The job has been described or advertised by or on behalf of the registered firm in a false, misleading, or deceptive manner;
    - (c) The registrant has not confirmed the availability of the job at the time of dissemination of the information; or
    - (d) The registrant has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.
- e. The director may refuse to issue, and may revoke, any registration for failure to comply with, or violation of, the provisions of this section or for any other good cause shown, within the meaning and purpose of this section. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant.
- f. The director, instead of revoking a registration, may suspend the registration for a period of time determined to be proper, or assess a penalty in lieu of suspension, or both, and may issue a new registration notwithstanding the revocation of a prior registration, provided that the applicant is found to have become entitled to the new registration.
- g. A registered consulting firm shall be permitted to provide temporary help services in the course of its business.
- h. A registered firm may engage in activities requiring registration under sections 24 and 25 of this act<sup>1</sup> if it complies with the requirements of those sections.
- i. Any person who fails to comply with the provisions of this section or rules and regulations promulgated by the director shall be subject to the provisions of sections 14 through 22 of this act.<sup>2</sup>

<sup>1</sup> Sections 34:8-65 and 34:8-66.

<sup>2</sup> Sections 34:8-55 through 34:8-63.

### **34:8-65. Career consulting or outplacement organizations and agents**

- a. Every career consulting or outplacement organization operating within this State shall, within 60 days following the effective date of this act and annu-

ally thereafter, register in writing with the chief on a form prescribed by regulation.

- b. Each registration form shall state the organization's name, and any fictitious or trade name used in its operation, each primary location, including street and street number of the building and place where its business is to be conducted, and the names and residence addresses of its principal owners or officers.
- c. In addition to registering pursuant to this section, each career consulting or outplacement organization shall notify the chief, in writing, whenever it utilizes any location, including mobile units, other than its primary location for services rendered to job seekers.
- d. Every agent, duly authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the registered organization, shall, within 60 days following the effective date of this act and annually thereafter, register, in writing, with the chief on a form prescribed by regulation.
- e. The director shall establish by rule and collect an annual fee from organization and agent registrants, which shall not be more than that paid by employment agencies or agents, to be used to the extent necessary to defray all expenses incurred by the bureau in the performance of its duties under this section.
- f. Each registered organization shall, at the time of its initial registration with the director and annually thereafter, post a bond in the amount of \$10,000 with a duly authorized surety company as surety, to be approved by the director. The bond shall be retained by the chief until 90 days after either the expiration or revocation of the registration. The director shall promulgate rules and regulations setting forth the terms and conditions of this bond and supply the prospective registrant firm with an approved form.
- g. Every career consulting or outplacement organization registered under this section shall provide each prospective job seeker desiring its services or products with a written explanation of each service or product which it provides or makes available to job seekers and the price for each service or product which shall be made available to the job seeker at the time of the signing of any contract for services or products.
- h. Any job seeker who signs a contract with any registered organization shall have the right to cancel the contract within three calendar days of the time of its signing and, upon the return of any materials provided to the job seeker by the registered organization, shall be entitled to receive a full refund of any fee, charge, or commission paid by the job seeker.

- i. Not more than one-third of any fee, charge or commission shall be collected by the registered organization for its services or products more than 60 days in advance of the date on which the registrant provides its services or products as stated in its contract.
- j. Every registered organization shall respond, in writing, within nine calendar days of receipt of any written complaint by a job seeker, stating the registered organization's position with respect to the complaint. Copies of a job seeker's complaint and the response shall be kept in a separate file by the registered organization for a period of one year after the date of the resolution of the complaint, or two years after the date of the complaint, whichever is later.
- k. If a demand for refund is denied by a registered organization and if the denial is found to have been in bad faith or if the registered organization fails to respond to a demand for a refund, a court in an action instituted by the job seeker shall award damages to the job seeker in an amount not to exceed \$200 in addition to actual damages sustained by the job seeker, together with reasonable attorneys' fees, filing fees, and reasonable costs of suit. If the registered organization refuses or is unable to pay the amount awarded by the court, the award may be satisfied out of the registered organization's bond.
- l. A registered organization shall not:
  - (1) Negotiate a job seeker's compensation and demand or receive a percentage therefrom as a fee, charge, or commission unless the percentage fee, charge, or commission has been disclosed to and accepted by the job seeker in the contract;
  - (2) Contract with employers on behalf of a job seeker; or
  - (3) Solicit job openings from employers or otherwise act as an intermediary for job seekers.
- m. Every contract for career consulting or outplacement organizations shall be in writing. A copy of the contract shall be given to the job seeker at the time the job seeker signs the contract. The contract shall contain all of the following:
  - (1) The name, address, and telephone number of the organization and the name of the organization's agent.
  - (2) The name and address of the individual signing the contract and the job seeker to whom the services are to be provided.
  - (3) A description of the services or products to be provided; a statement of when those services or products are to be provided and by which organizations, if other than the contracting organization; the term of

the contract; and refund provisions, as applicable, if the described services or products are not provided according to the contract.

- (4) The amount of the fee to be charged to or collected from the job seeker receiving the services or products or from any other individual, and the date or dates when that fee is required to be paid.

- (5) The following statements, in at least 10-point bold-faced type:

“No verbal or written promise or guarantee of any job or employment is made or implied under the terms of this contract.

This organization is registered with the Bureau of Employment and Personnel Services of the State of New Jersey, (current address of the bureau). Inquiries concerning your contract may be sent to this address.”

- (6) The following statement, in at least 10-point bold-faced type:

#### “YOUR RIGHT TO CANCEL

You may cancel this contract for services or products, without any penalty or obligation, if notice of cancellation is given, in writing, within three calendar days after you have signed this contract.

To cancel this contract, just mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, or send a telegram containing a notice of cancellation, to (name of registrant) at (address of its place of business), not later than midnight of the third calendar day after you signed this contract.

#### CANCELLATION NOTICE

I hereby cancel this contract.

---

Date

---

Job seeker's Signature

---

Job seeker's Name (print)

---

Address

The requirement that the contract include this statement regarding the right to cancel shall not apply when time is of the essence and the services or products must be performed or provided within three calendar days of the date that the contract is entered into pursuant to the request of the job seeker, if the job seeker furnishes the registered organization with a separate dated and signed personal statement in the job seeker's own handwriting, describing the situation requiring the immediate provision of services or products and expressly ac-

knowledging and waiving the right to cancel the contract within three calendar days.

- (7) Any further information specified in regulations adopted by the director.
- n. The requirements of this section shall not apply to any person who receives no prepayment for services or products from a job seeker and who:
  - (1) Provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for services or products rendered; or
  - (2) Provides outplacement services exclusively as part of a job seeker's benefit or severance package with a current or former employer.
- o. Newspaper advertising pertaining to services offered or provided in this State by career consulting or outplacement organizations appearing within or adjacent to help-wanted advertising shall contain the phrase "not an employment agency" in a clear, conspicuous, and prominent manner.
- p. In addition to any act or practice in violation of P.L.1960, c. 39 (C.56:8- 1 et seq.), it shall be a violation of this act for any registrant or its agent to:
  - (1) Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representations concerning the services or products that the registrant provides to job seekers.
  - (2) Disseminate information to a job seeker knowing or recklessly disregarding information that:
    - (a) The job does not exist or the job seeker is not qualified for the job;
    - (b) The job has been described or advertised by or on behalf of the registered organization in a false, misleading, or deceptive manner;
    - (c) The registrant has not confirmed the availability of the job at the time of dissemination of the information; or
    - (d) The registrant has not obtained written or oral permission to list the job from the employer or any authorized agent of the employer.
- q. The director may refuse to issue, and may revoke, any registration for any failure to comply with, or violation of, the provisions of this section or for any other good cause shown, within the meaning and purpose of this section. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant. The director, instead of revoking any registration, may suspend the registration for a period of time as shall be determined to be appropriate, or assess a



penalty in lieu of suspension, or both, and may issue a new registration notwithstanding the revocation of a prior registration provided that the applicant is found to have become entitled to the new registration.

- r. A registered organization may engage in activities requiring registration under sections 23 and 25 of this act<sup>1</sup> if it complies with the requirements of those sections.
- s. Any person who fails to comply with the provisions of this section or rules and regulations promulgated by the director shall be subject to sections 14 through 22 of this act.<sup>2</sup>

<sup>1</sup> Section 34:8-64 and 34:8-66.

<sup>2</sup> Sections 34:8-55 through 34:8-63.

### **34:8-66. Prepaid computer job matching or job listing services**

- a. Every prepaid computer job matching service or job listing service operating or providing services or products within this State shall, within 60 days following the effective date of this act and annually thereafter, register, in writing, with the chief on a form prescribed by regulation.
- b. Each registration form shall state the service's name and fictitious or trade name used in its operation, each primary location, including street and street number of the building and place where its business is to be conducted, and the names and residence addresses of its principal owners or officers.
- c. In addition to registering pursuant to this section, a prepaid computer matching service or job listing service shall notify the bureau in writing whenever it utilizes any location, including mobile units, other than its primary location for the provision of services or products to job seekers.
- d. Every agent, duly authorized and empowered by the owner of the registered service to solicit business or otherwise act as an agent of the registered service, shall, within 60 days following the effective date of this act and annually thereafter, register, in writing, with the chief on a form prescribed by regulation.
- e. The director shall establish by rule and collect an annual fee from service and agent registrants, which shall not be more than that paid by employment agencies or agents, to be used to the extent necessary to defray all expenses incurred by the bureau in the performance of its duties under this section.
- f. Each service applicant shall at the time of its initial registration with the director and annually thereafter, post a bond in the amount of \$10,000 with a duly authorized surety company as surety, to be approved by the director. The bond shall be retained by the chief until 90 days after either the expiration or revocation of the registration. The director shall promulgate rules

and regulations setting forth the terms and conditions of this bond and supply the service applicant firm with an approved form.

- g. Prior to the acceptance of a fee from a job seeker, a registered service shall provide the job seeker with a written contract which shall include the following:
  - (1) The name of the registered service and the address and telephone number of each primary or other location of the registered service providing the listing to the job seeker.
  - (2) Acknowledgement of receipt of the registered service's fee schedule.
  - (3) A description of the service or product to be performed or product to be provided by the registered service, including significant conditions, restrictions, and limitations where applicable.
  - (4) A description of the job seeker's specifications for the employment opportunity, including, but not limited to, the following:
    - (a) Type of job.
    - (b) Interests of job seeker.
    - (c) Qualifications of job seeker.
    - (d) Salary, benefits, and other conditions of employment.
    - (e) Location of job.
  - (5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.
  - (6) A clause setting forth the right to a full refund of the fee paid in advance.
  - (7) The signature of the registered service's agent.
  - (8) The following statement, printed on the fact of the contract in type no smaller than 10-point bold-faced type:

"This service is registered with the Bureau of Employment and Personnel Services of the State of New Jersey, (current address of bureau). Inquiries concerning your contract may be sent to this address."
  - (9) At the bottom of the contract a notice to the effect that the contract is the property of the job seeker and shall not be taken from the job seeker.
- h. Every contract or receipt shall be made and numbered consecutively in original and duplicate, both to be signed by the job seeker and the service's agent. The original shall be given to the job seeker and the duplicate shall be kept on file at the service's primary location.
- i. The form of contract proposed to be used by a registrant to effect compliance with this section shall be filed with the bureau prior to use. Any modification of a form previously filed with the bureau, including a change in

the name or a primary location of the registered service, shall also be filed prior to use.

- j. A registered service shall refund in full the advance fee paid by a job seeker if the service does not, within five calendar days after execution of the contract, supply at least three employment opportunities then available to the job seeker and meeting the specifications of the contract. A registered service will be deemed to have supplied information meeting the specifications of the job seeker if the information supplied meets the contract specifications with reference to:

- (1) Name of employer and type of job;
- (2) Interests of job seeker;
- (3) Qualifications of job seeker;
- (4) Salary, benefits, and other conditions of employment;
- (5) Location of job; and
- (6) Any other specification expressly set forth in the contract.

A demand for the return of the fee shall be made by or on behalf of the job seeker within 10 calendar days following the expiration of the five-day period referred to above by delivery or by registered or certified mail to the address of the office or location set forth in the contract.

- k. A registered service shall refund any amount in excess of a \$25 service charge to the job seeker if the job seeker does not obtain a job, provided that the job seeker demands a return of that part of the fee within 10 calendar days after the expiration of the contract.
- l. If employment, once obtained, lasts less than 90 days, the fee paid shall be refunded as specified in subsection b. of section 10 of this act.<sup>1</sup>
- m. Each contract shall also contain refund provisions, approved by the bureau, which shall, unless different language is approved in writing by the bureau prior to use, read as follows:

#### “RIGHT TO REFUND

If within five calendar days after payment of any advance fee, the registrant has not supplied the job seeker with at least three available employment opportunities meeting the specifications of the contract as to (1) name of the employer and type of job; (2) interest of job seeker; (3) qualifications of job seeker; (4) salary, benefits, and other conditions of employment; (5) location of job; and (6) any other specification expressly set forth in the contract, the full amount of the fee paid shall be refunded to the job seeker within 10 calendar days after the expiration of the five-day period.”

If the job seeker does not obtain a job through the services of the registered service, any amount paid in fees in excess of a \$25 service charge shall be refunded to the job seeker, upon demand by the job seeker made within 10 calendar days of the expiration of the contract.

- n. Every registered service shall respond, in writing, within nine calendar days of receipt of any written complaint by a job seeker, stating the registered service's position with respect to that complaint. A copy of a job seeker's complaint and the response shall be kept in a separate file by the registered service for a period of one year after the date of the resolution of the complaint, or two years after the date of the complaint, whichever is later.
- o. If a demand for refund is denied by a registered service, and if the denial is found to have been in bad faith or if the registered service fails to respond to a demand for a refund, a court in an action instituted by the job seeker shall award damages to the job seeker in an amount not to exceed \$200.00 in addition to actual damages sustained by the job seeker, together with reasonable attorneys' fees, filing fees, and reasonable costs of suit. If the registered service refuses or is unable to pay the amount awarded by the court, the award may be satisfied out of the registered service's bond.
- p. In addition to any act or practice in violation of P.L.1960, c. 39 (C.56:8- 1 et seq.), it shall be a violation of this act for any registrant or its agent to:
  - (1) Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representations concerning the services or products that the registrant provides to job seekers; or
  - (2) Disseminate information to a job seeker knowing or recklessly disregarding information that:
    - (a) The job does not exist or the job seeker is not qualified for the job;
    - (b) The job has been described or advertised by or on behalf of the registered service in a false, misleading, or deceptive manner;
    - (c) The registrant has not confirmed the availability of the job at the time of dissemination of the information; or
    - (d) The registrant has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.
- q. The director may refuse to issue, and may revoke, any registration for any failure to comply with, or any violation of, the provisions of this section or for any other good cause shown, within the meaning and purpose of this section. A refusal shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant as the case may be. The director instead of revoking any registration may suspend the registra-

tion for a period of time as determined to be proper, or assess a penalty in lieu of suspension, or both; and may issue a new registration notwithstanding the revocation of a prior registration provided that the applicant is found to have become entitled to the new registration.

- r. Any person who fails to comply with the provisions of this section or rules and regulations promulgated by the director shall be subject to the provisions of sections 14 through 22 of this act.<sup>2</sup>

<sup>1</sup> Section 34:8-51.

<sup>2</sup> Sections 34:8-55 through 34:8-63.

# New Jersey Statutes Annotated

## Title 56, Chapter 8

### Relevant Excerpts from the Consumer Fraud Act

#### 56:8-1. Definitions

- (a) The term “advertisement” shall include the attempt directly or indirectly by publication, dissemination, solicitation, indorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof or to make any loan;
- (b) The term “Attorney General” shall mean the Attorney General of the State of New Jersey or any person acting on his behalf;
- (c) The term “merchandise” shall include any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale;
- (d) The term “person” as used in this act shall include any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof;
- (e) The term “sale” shall include any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute.

#### 56:8-1.1. Temporary help service; inclusion within definition of merchandise; rules or regulations; fees

Services provided by a temporary help service firm shall constitute services within the term “merchandise” pursuant to P.L.1960, c. 39, s. 1 (C. 56:8-1(c)), and the provisions of P.L.1960, c. 39 (C. 56:8-1 et seq.), shall apply to the operation of a temporary help service firm.

The Attorney General shall promulgate rules and regulations pursuant to P.L.1960, c. 39, s. 4 (C. 56:8-4). The Attorney General shall, by rule or regulation, establish, prescribe or change an annual fee or charge on temporary help service firms to such extent as shall be necessary to defray all proper expenses incurred by his office in the performance of its duties under this section of this act but such fees or charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required. In addition to any other appropriate requirements, the Attorney General shall, by rule or regulation require the following:

- a. Each temporary help service firm operating within the State of New Jersey shall, prior to the effective date of this act or commencement of operation and annually thereafter, notify the Attorney General as to its appropriate name, if applicable; the trade name of its operation; its complete address,

including street and street number of the building and place where its business is to be conducted; and the names and resident addresses of its officers. Each principal or owner shall provide an affidavit to the Attorney General setting forth whether such principal or owner has ever been convicted of a crime.

- b. When a temporary help service firm utilizes any location other than its primary location for the recruiting of applicants, including mobile locations, it shall notify the Office of the Attorney General of such fact in writing or by telephone, and subsequently confirm in writing prior to the utilization of such facility.
- c. Each temporary help service firm shall at the time of its initial notification to the Attorney General, and annually thereafter, post a bond of \$1,000.00 with the Attorney General to secure compliance with P.L.1960, c. 39 (C. 56:8-1 et seq.) as amended and supplemented, provided however that the Attorney General may waive such bond for any corporation or entity having a net worth of \$100,000 or more.

**56:8-2.            Fraud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice**

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; provided, however, that nothing herein contained shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design or purpose of the advertiser.

**56:8-2.1.        Operation simulating governmental agency as unlawful practice**

It shall be an unlawful practice for any person to operate under a name or in a manner which wrongfully implies that such person is a branch of or associated with any department or agency of the Federal Government or of this State or any of its political subdivisions, or use any seal, insignia, envelope or other format which simulates that of any governmental department or agency.

#### **56:8-2.2. Scheme to not sell item or service advertised**

The advertisement of merchandise as part of a plan or scheme not to sell the item or service so advertised or not to sell the same at the advertised price is an unlawful practice and a violation of the act to which this act is a supplement.

#### **56:8-2.3. Notification to person that he has won prize and requiring him to perform act**

The notification to any person by any means, as a part of an advertising plan or scheme, that he has won a prize and requiring him to do any act, purchase any other item or submit to a sales promotion effort is an unlawful practice and a violation of the act to which this act is a supplement.

#### **56:8-2.4. Advertisement of unassembled merchandise as assembled in picture or illustration; prohibition**

It shall be an unlawful practice for a person to advertise merchandise for sale accompanied by a picture or illustration of the merchandise in an assembled condition when it is intended to be sold unassembled, unless the advertisement bears the notation that the merchandise is to be sold unassembled.

#### **56:8-2.5. Sale, attempt to sell or offer for sale of merchandise without tag or label with selling price**

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign either affixed to the merchandise or located at the point where the merchandise is offered for sale.

#### **56:8-2.6. Daily failure to tag as separate violation**

For the purposes of this act, each day for which the total selling price is not marked in accordance with the provisions of this act for each group of identical merchandise shall constitute a separate violation of this act and the act of which this act is a supplement.

#### **56:8-2.7. Solicitation of funds or contributions, or sale or offer for sale of goods or services under false representation of solicitation for charitable or nonprofit organization or of benefit for handicapped persons**

It shall be an unlawful practice for any person to solicit funds or a contribution of any kind, or to sell or offer for sale any goods, wares, merchandise or services, by telephone or otherwise, where it has been falsely represented by such person or where the consumer has been falsely led to believe that such person is soliciting by or on behalf of any charitable or nonprofit organization, or that a contribution to or purchase from such person shall substantially benefit handicapped persons.



#### **56:8-2.8. “Going out of business sale”; time limits**

It shall be an unlawful practice for any person to advertise merchandise for sale as a “going out of business sale” or in terms substantially similar to “going out of business sale” for a period in excess of 90 days or to advertise more than one such sale in 360 days. The 360-day period shall commence on the first day of such sale. For any person in violation of this act, each day in violation shall constitute an additional, separate and distinct violation.

#### **56:8-2.9. Misrepresentation of identity of food in menus or advertisements of eating establishments**

It shall be an unlawful practice for any person to misrepresent on any menu or other posted information, including advertisements, the identity of any food or food products to any of the patrons or customers of eating establishments including but not limited to restaurants, hotels, cafes, lunch counters or other places where food is regularly prepared and sold for consumption on or off the premises. This section shall not apply to any section or sections of a retail food or grocery store which do not provide facilities for on the premises consumption of food or food products.

#### **56:8-2.10. Acts constituting misrepresentation of identity of food**

The identity of said food or food products shall be deemed misrepresented if:

- a. Its description is false or misleading in any particular;
- b. Its description omits information which by its omission renders the description false or misleading in any particular;
- c. It is served, sold, or distributed under the name of another food or food product;
- d. It purports to be or is represented as a food or food product for which a definition of identity and standard of quality has been established by custom and usage unless it conforms to such definition and standard.

#### **56:8-2.11. Violations; liability**

Any person violating the provisions of the within act shall be liable for a refund of all moneys acquired by means of any practice declared herein to be unlawful.

#### **56:8-2.12. Recovery of refund in private action**

The refund of moneys herein provided for may be recovered in a private action or by such persons authorized to initiate actions pursuant to P.L. 1975, c. 376 (C.40:23-6.47 et seq.)

### 56:8-2.13. Cumulation of rights and remedies; construction of act

The rights, remedies and prohibitions accorded by the provisions of this act are hereby declared to be in addition to and cumulative of any other right, remedy or prohibition accorded by the common law or statutes of this State, and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

### 56:8-2.14. Short title

This act shall be known and may be cited as the “Refund Policy Disclosure Act.”

### 56:8-2.15. Definitions

As used in this act:

- a. “Merchandise” means any objects, wares, goods, commodities, or any other tangible items offered, directly or indirectly, to the public for sale.
- b. “Proof of purchase” means a receipt, bill, credit card slip, or any other form of evidence which constitutes reasonable proof of purchase.
- c. “Retail mercantile establishment” means any place of business where merchandise is exposed or offered for sale at retail to members of the consuming public.

### 56:8-2.16. Posting of signs; locations

Every retail mercantile establishment shall conspicuously post its refund policy as to all merchandise on a sign in at least one of the following locations:

- a. Attached to the item itself, or
- b. Affixed to each cash register or point of sale, or
- c. So situated as to be clearly visible to the buyer from the cash register, or
- d. Posted at each store entrance used by the public.

### 56:8-2.17. Signs; contents

Any sign required by section 3 of this act <sup>1</sup> to be posted in retail mercantile establishments shall state whether or not it is a policy of such establishment to give refunds and, if so, under what conditions, including, but not limited to, whether a refund will be given:

- a. On merchandise which has been advertised as “sale” merchandise or marked “as is”;
- b. On merchandise for which no proof of purchase exists;
- c. At any time or not beyond a point in time specified; or
- d. In cash, or as credit or store credit only.

<sup>1</sup> Section 56:8-2.16.

#### **56:8-2.18. Penalties; refunds or credits to buyers**

A retail mercantile establishment violating any provision of this act shall be liable to the buyer, for up to 20 days from the date of purchase, for a cash refund or a credit, at the buyer's option, provided that the merchandise has not been used or damaged by the buyer.

#### **56:8-2.19. Posting of signs; exceptions**

The provisions of section 3<sup>1</sup> shall not apply to retail mercantile establishments or departments that have a policy of providing, for a period of not less than 20 days after the date of purchase, a cash refund for a cash purchase or providing a cash refund or issuing a credit for a credit purchase, which credit is applied to the account on which the purchase was debited, in connection with the return of its unused and undamaged merchandise.

<sup>1</sup> Section 56:8-2.16.

#### **56:8-2.20. Motor vehicle; perishables; custom merchandise; non-returnable merchandise; application of act**

This act shall not apply to sales of motor vehicles, or perishables and incidentals to such perishables, or to custom ordered, custom finished merchandise, or merchandise not returnable by law.

#### **56:8-2.21. Jurisdiction; penalties; cash refund; credit; damages**

- a. An individual action for a violation of this act may be brought in a municipal court in whose jurisdiction the sale was made.
- b. In addition to the penalties provided for in section 5,<sup>1</sup> a retail mercantile establishment that fails to comply with the requirements of this act and, in practice, does not have a policy as provided in section 6<sup>2</sup> and has refused to accept the return of the merchandise shall be liable to the consumer for:
  - (1) A cash refund or a credit, at the buyer's option, provided the merchandise has not been used or damaged, and
  - (2) Damages of not more than \$200.00.

<sup>1</sup> Section 56:8-2.18.

<sup>2</sup> Section 56:8-2.19.

#### **56:8-2.22. Copy of transaction or contract; provision to consumer**

It shall be an unlawful practice for a person in connection with a sale of merchandise to require or request the consumer to sign any document as evidence or acknowledgment of the sales transaction, of the existence of the sales contract, or of the discharge by the person of any obligation to the consumer specified in or

arising out of the transaction or contract, unless he shall at the same time provide the consumer with a full and accurate copy of the document so presented for signature but this section shall not be applicable to orders placed through the mail by the consumer for merchandise.

#### **56:8-2.23. Solicitation of used goods or wares by profit-making enterprise; disclosures**

It shall be an unlawful practice for any person, other than a charitable or non-profit organization, engaged in the business of selling used goods, wares or merchandise for profit to solicit, by telephone, by the placement of collection boxes or otherwise, donations of used goods, wares or merchandise for resale for profit, without first disclosing to the person solicited the profit-making nature of the business, or if profits are to be shared with a charitable or nonprofit organization, the portion of profits which that organization will receive. For the purposes of this act, "engaged in the business of selling used goods, wares or merchandise" means anyone who conducts sales more than five times a year.

#### **56:8-3. Investigation by attorney general; powers and duties**

When it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this act, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may:

- (a) Require such person to file on such forms as are prescribed a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;
- (b) Examine under oath any person in connection with the sale or advertisement of any merchandise;
- (c) Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary; and
- (d) Pursuant to an order of the Superior Court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this act, and retain the same in his possession until the completion of all proceedings in connection with which the same are produced.

#### **56:8-3.1. Violations; penalty**

Upon receiving evidence of any violation of the provisions of chapter 39 of the laws of 1960,<sup>1</sup> the Attorney General, or his designee, is empowered to hold hearings upon said violation and upon finding the violation to have been committed, to assess a penalty against the person alleged to have committed such violation in

such amount within the limits of chapter 39 of the laws of 1966 as the Attorney General deems proper under the circumstances. Any such amounts collected by the Attorney General shall be paid forthwith into the State Treasury for the general purposes of the State.

<sup>1</sup> Section 56:8-1 et seq.

#### **56:8-4. Additional powers**

To accomplish the objectives and to carry out the duties prescribed by this act, the Attorney General, in addition to other powers conferred upon him by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, promulgate such rules and regulations, and prescribe such forms as may be necessary, which shall have the force of law.

#### **56:8-5. Service of notice by attorney general**

Service by the Attorney General of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this State, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- (a) Personal service thereof without this State; or
- (b) The mailing thereof by registered mail to the last known place of business, residence or abode, within or without this State of such person for whom the same is intended; or
- (c) As to any person other than a natural person, in accordance with the Rules Governing the Courts of the State of New Jersey pertaining to service of process, provided, however, that service shall be made by the Attorney General; or
- (d) Such service as the Superior Court may direct in lieu of personal service within this State.

#### **56:8-6. Failure or refusal to file statement or report or obey subpoena issued by attorney general; punishment**

If any person shall fail or refuse to file any statement or report, or obey any subpoena issued by the Attorney General, the Attorney General may apply to the Superior Court and obtain an order:

- (a) Adjudging such person in contempt of court;
- (b) Granting injunctive relief without notice restraining the sale or advertisement of any merchandise by such persons;
- (c) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this State or revoking or suspending the

certificate of authority to do business in this State of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

- (d) Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

**56:8-7. Self-incrimination; exemption from prosecution or punishment**

If any person shall refuse to testify or produce any book, paper or other document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper or document, he shall comply with such direction.

A person who is entitled by law to, and does assert such privilege, and who complies with such direction shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving such testimony.

**56:8-8. Injunction against unlawful practices; appointment of receiver; additional penalties**

Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this act he may seek and obtain in a summary action in the Superior Court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof or an order appointing a receiver, or both. In addition to any other remedy authorized herein the court may enjoin an individual from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member of any executive board or similar governing body, principal, manager, stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State, vacate or annul the charter of a corporation created by or under the laws of this State, revoke the certificate of authority to do business in this State of a foreign corporation, and revoke any other licenses, permits or certificates issued pursuant to law to such person whenever such management, ownership, activity, charter authority license, permit or certificate have been or may be used to further such unlawful practice. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or

property, real or personal which may have been acquired by means of any practice herein declared to be unlawful.

**56:8-9. Powers and duties of receiver**

When a receiver is appointed by the court pursuant to this act, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled, if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a corporation, partnership or business entity the receiver shall settle the estate and distribute the assets under the direction of the court, and he shall have all the powers and duties conferred upon receivers by the provisions of Title 14, Corporations, General,<sup>1</sup> so far as the provisions thereof are applicable. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

**56:8-10. Claims against persons acquiring money or property by unlawful practices**

Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this act, the provisions of this act shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

**56:8-11. Costs in actions or proceedings brought by attorney general**

In any action or proceeding brought under the provisions of this act, the Attorney General shall be entitled to recover costs for the use of this State.

**56:8-12. Partial invalidity**

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

### 56:8-13. Penalty for violations

Any person who violates any of the provisions of the act to which this act is a supplement shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$7,500 for the first offense and not more than \$15,000 for the second and each subsequent offense.

### 56:8-14. Collection and enforcement of penalty; process; restoration of moneys or property unlawfully acquired; warrant of arrest to satisfy civil penalty

The Superior Court and every municipal court shall have jurisdiction of proceedings for the collection and enforcement of a penalty imposed because of the violation, within the territorial jurisdiction of the court, of any provision of the act to which this act is a supplement. Except as otherwise provided in this act the penalty shall be collected and enforced in a summary proceeding pursuant to “the penalty enforcement law” (N.J.S. 2A:58-1 et seq.). Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the Attorney General or any other person.

In any action brought pursuant to this section to enforce any order of the Attorney General or his designee the court may, without regard to jurisdictional limitations, restore to any person in interest any moneys or property, real or personal, which have been acquired by any means declared to be unlawful under this act.

In the event that any person found to have violated any provision of this act fails to pay a civil penalty assessed by the court, the court may issue, upon application by the Attorney General, a warrant for the arrest of such person for the purpose of bringing him before the court to satisfy the civil penalty imposed.

### 56:8-14.1. Actions by director of county or municipal office of consumer affairs; award of penalties, fines, fees and costs

In any action in a court of appropriate jurisdiction initiated by the director of any certified county or municipal office of consumer affairs, the office of consumer affairs shall be entitled, if successful in the action, to such penalties, fines or fees as may be authorized pursuant to chapter 8 of Title 56 of the Revised Statutes and awarded by the court, and to the reasonable costs of any such action, including investigative and legal costs, as may be filed with and approved by the court. Such costs shall be in addition to the taxed costs authorized in successful proceedings under the Rules Governing the Courts of the State of New Jersey.

As used in this section, “court of appropriate jurisdiction” includes a municipal court in the municipality where the offense was committed or where the defendant may be found. However, the term shall not include a municipal court in a city of the First Class if the Chief Justice of the Supreme Court approves a recommendation submitted by the assignment judge of the vicinage in which the court is located to exempt that court from such jurisdiction.



All moneys collected pursuant to this section shall be paid to the officer lawfully charged with the custody of the general funds of the county or municipality.

**56:8-15. Restoration of moneys or property unlawfully acquired; order**

In addition to the assessment of civil penalties, the Attorney General or his designee may, after a hearing as provided in P.L.1967, c. 97<sup>1</sup> and upon a finding of an unlawful practice under this act and the act hereby amended and supplemented, order that any moneys or property, real or personal, which have been acquired by means of such unlawful practice be restored to any person in interest.

<sup>1</sup> Section 56:8-3.1.

**56:8-16. Remission of penalties**

In assessing any penalty under this act and the act hereby amended and supplemented, the Attorney General or his designee may provide for the remission of all or any part of such penalty conditioned upon prompt compliance with the requirements thereof and any order entered thereunder.

**56:8-17. Failure to pay penalty or restore money or property; certificate of indebtedness; recording as docketed judgment**

Upon the failure of any person to comply within 10 days after service of any order of the Attorney General or his designee directing payment of penalties or restoration of moneys or property, the Attorney General may issue a certificate to the Clerk of the Superior Court that such person is indebted to the State for the payment of such penalty and the moneys or property ordered restored. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed and the amount of moneys ordered restored, a listing of property ordered restored, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the Attorney General or his designee.

**56:8-18. Cease and desist order; violations; penalty**

Where the Attorney General or his designee, after a hearing as provided in P.L.1967, c. 97,<sup>1</sup> finds that an unlawful practice has been or may be committed, he may order the person committing such unlawful practice to cease and desist or refrain from committing said practice in the future. When it shall appear to the Attorney General that a person against whom a cease and desist order has been entered has violated said order, the Attorney General may initiate a summary proceeding in the Superior Court for the violation thereof. Any person found to have violated a cease and desist order shall pay to the State of New Jersey civil penalties in the amount of not more than \$25,000.00 for each violation of said order. In the

event that any person fails to pay a civil penalty assessed by the court for violation of a cease and desist order, the court assessing the unpaid penalty is authorized, upon application of the Attorney General, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

<sup>1</sup> Section 56:8-3.1.

**56:8-19. Action or counterclaim by injured person; recovery of treble damages and costs**

Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented may bring an action or assert a counterclaim therefor in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.

**56:8-20. Notice to attorney general of action or defense by injured person; intervention**

Any party to an action asserting a claim, counterclaim or defense based upon violation of this act or the act hereby amended or supplemented shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after the filing of such pleading with the court. Upon application to the court wherein the matter is pending, the Attorney General shall be permitted to intervene or to appear in any status appropriate to the matter.

# New Jersey Statutes Annotated

## Title 2A, Chapter 58

### Penalty Enforcement Law

#### 2A:58-1. Summary proceedings for collection of penalty

Any penalty imposed by any statute heretofore or hereafter enacted, which by direction or authority of such statute may be collected or enforced by summary proceedings or in a summary manner may be collected and enforced in summary proceedings pursuant to this chapter and the rules of the supreme court.

#### 2A:58-2. Jurisdiction of proceedings

Every jurisdiction is conferred by the statute imposing the penalty, shall have jurisdiction of proceedings for the enforcement of any such penalty.

#### 2A:58-3. Hearing without jury

Unless otherwise provided in the statute imposing the penalty, such hearing shall be without a jury.

#### 2A:58-4. Money judgment; execution, property and persons subject to

If a money judgment is rendered against a defendant, execution may issue:

- (1) Against the goods and chattels of such defendant in all cases, and also,
- (2) Against the lands of such defendant if such judgment is rendered in the Superior Court, and also,
- (3) Against the body of such defendant if the court in which the judgment is rendered shall, by special order, so direct and shall designate in said order the maximum number of days during which the defendant may be detained in custody under such body execution, in no case to exceed one hundred days.

#### 2A:58-5. Payment of penalty before judgment; effect

Payment of a money penalty by a defendant after proceedings begun and before judgment, shall have the effect of a judgment of conviction for the violation complained of in establishing the status of the defendant as a second or subsequent violator in any subsequent proceeding.

#### 2A:58-6. Sunday or holiday, proceedings instituted on

If the statute imposing the penalty provides that proceedings may be instituted on any day of the week including Sunday or upon a holiday, the institution of such proceedings on Sunday or on a holiday shall be no bar to the successful prosecution of the same, and any process issued or served on Sunday or upon a holiday shall be as valid as if issued or served on any other day.

**2A:58-7. Proceedings in name of state of New Jersey**

When the statute imposing the penalty does not specify at whose suit the proceedings shall be brought, they shall be brought in the name of the state of New Jersey.

**2A:58-8. Payment of money judgment to court; remittance to state treasurer; exception**

If a money judgment is rendered against a defendant, payment shall be made to the court or judicial officer having jurisdiction over the proceedings and shall be remitted to the state treasurer of New Jersey, unless other disposition is provided for in the statute imposing the penalty.

**2A:58-9. Citation of chapter**

This chapter shall be known as “the penalty enforcement law”.

# Statement of Labor Disputes

Chapter 13C Labor Disputes in General Section 34:13C-3 provides that employment agents licensed as such under the laws of the State of New Jersey shall not knowingly refer an applicant for employment to an employer any of whose employees are then engaged in a strike or who have been locked out. Any person violating provisions of this act shall be guilty of a misdemeanor as provided for in Section 34:13C-5.

# New Jersey Administrative Code

## Title 13, Chapter 45B

### Regulated Business Section Regulations

#### **SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS**

##### **13:45B-1.1 Purpose and scope**

- (a) The rules contained in this chapter implement N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1, and regulate the operation of persons offering, promising, attempting to procure and/or supplying, procuring, obtaining or assisting in procuring or obtaining employment or personnel services or products in the State of New Jersey.
- (b) This chapter shall apply to any person engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq., including persons whose residence or principal place of business is located outside of this State.

##### **13:45B-1.2 Definitions**

The following words and terms, when used in this chapter and in license application forms and licenses, shall have the following meanings unless the context clearly indicates otherwise:

“Accepting employment” means that a job seeker has entered into an agreement with an employer which includes:

1. The terms and conditions of employment;
2. The salary or wages and any benefits to be paid to the job seeker as compensation for employment; and
3. The date, time and place employment will commence.

“Act” means P.L. 1989, c.331, (N.J.S.A. 34:8-43 et seq.), an Act regulating certain employment agencies, services and firms, supplementing Title 52 of the Revised Statutes and repealing P.L. 1951, c.337 and Section 6 of P.L. 1981, c.500.

“Advertisement” means any advertisement as defined by N.J.S.A. 56:8-1(a) of any service or product, including any statement appearing in a newspaper, periodical, pamphlet, circular, or other publication, in direct mail literature, on a display or any exterior or interior sign, or radio or television broadcast, or transmitted by telecopier, telex, or telephone, that offers a service or product for sale, whether or not the statement includes a price.

“Agent” means any individual who performs any function or activity for or on behalf of any person, the purpose of which is to provide services or products to individuals seeking employment, career guidance or counseling, or employment-related services or products.

“Agent-registrant” means a person authorized and empowered by the owner of a service registered pursuant to N.J.S.A. 34:8-43 et seq. to solicit business or otherwise act as an agent of the registered service.

“Applicant” means any person applying for licensing or registration under the Act.

“Bona fide job order” means an accurate written or recorded description of a job or jobs to be filled, with an address or location where the job is to be performed, the range of salary, the conditions of employment offered, the date of order, the name of the individual placing the order, and the name of the interviewer to be contacted by the job seeker.

“Booking agency” means any person who procures, offers, promises, or attempts to procure employment for performing artists, or athletes, not under the jurisdiction of the Athletic Control Board, and who collects a fee for providing those services. Under N.J.S.A. 34:8-43 et seq., a booking agency is licensed as an employment agency.

“Broker” means a person who acts, works or performs duties as an agent for others, in return for a fee, charge or commission.

“Career consulting or outplacement organization” means any person required to be registered under N.J.S.A. 34:8-65, providing or rendering services, with or without related products, in connection with advice, instruction, analysis, recommendation or assistance concerning past, present, or future employment or compensation for an individual’s time, labor or effort where the products or services are paid for by the job seeker.

“Career counseling service” means any person who, through its agents or otherwise, procures or represents itself as procuring employment or employment assistance or advertises in any manner the following services for a fee paid by the job seeker: career counseling; vocational guidance; aptitude, achievement or vocational testing; executive consulting; personnel consulting; career management, evaluation, or planning; the development of resumes and other promotional materials relating to the preparation for employment; or referral services relating to employment or employment qualifications. Pursuant to N.J.S.A. 34:8-43 et seq., a career counseling service is licensed as an employment agency. A career counseling service shall not include career consulting or outplacement organizations required to be registered under N.J.S.A. 34:8-65.

“Consulting firm” means any person required to be registered under N.J.S.A. 34:8-64 who: identifies, appraises, refers or recommends individuals to be considered for employment by the employer; and is compensated for services solely by payments from the employer and is not in any instance, compensated, directly or indirectly, by an individual who is identified, appraised, referred or recommended. (Consulting firms are commonly known as “executive search firms” or “headhunters.”)

“Director” means the Director of the Division of Consumer Affairs or his or her designee.

“Division” means the Division of Consumer Affairs, Department of Law and Public Safety, 124 Halsey Street, Newark, New Jersey 07102.

“Employer” means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wage, or other compensation or benefits are to be paid. For purposes of the Act alone, an employment agency is not an “employer,” except of its own agents.

“Employment” means hiring or engaging the services of a person.

“Employment agency” means any person who, through its agents or otherwise, for a fee, charge or commission:

1. Procures, or obtains, or offers, promises or attempts to procure, obtain, or assist in procuring or obtaining employment for a job seeker or employees for an employer;
2. Supplies job seekers to employers seeking employees on a part-time or temporary assignment basis who has not filed as a temporary help service pursuant to the provisions of N.J.S.A. 56:8-1.1;
3. Procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models;
4. Acts as a placement firm, career counseling service, or resume service;
5. Acts as a nurses’ registry, as defined hereinafter;
6. Places health care personnel in private homes or on private duty; or
7. Places household workers in domestic positions, including salaried “nannies” or “au pairs.”

“Executive Director” means the Executive Director of the Office of Consumer Protection.

“Fee, charge or commission” means any payment of money, or promise to pay money to a person in consideration for performance of any service for which licensure or registration is required by the Act, or the excess of money received by a person furnishing employment or job seekers over what he has paid for transportation, transfer of baggage or lodging for a job seeker. “Fee, charge or commission” shall also include the difference between the amount of money received by any person who either furnishes job seekers or performers for any entertainment, exhibition or performance, or who furnishes baby sitters for any occasion, and the amount paid by the person to the job seekers, performers or baby sitters.

“Integrated” means sharing a common business structure as well as any one or more of the following: the same trade name, office space, management, personnel,



advertising, business and personnel records, office systems and/or equipment, such as telephone and/or telecopier.

“Job listing service” means any person required to be registered under N.J.S.A. 34:8-66 who, by advertisement or other means, offers to provide job seekers with a list of employers, a list of job openings or a similar publication, or prepares resumes or lists of applicants for distribution to potential employers, where a fee or other valuable consideration is exacted or attempted to be collected, either directly or indirectly.

“Job order” is a request received from a client for job seekers and is recorded by the employment and personnel service in written form. The following minimum information is required to be recorded:

1. The name of the company;
2. The address of the company;
3. The name of the person placing the order;
4. The job title;
5. The salary; and
6. A brief description of the job.

“Job seeker” means any individual seeking employment, career guidance or counseling or employment-related services or products.

“License” means a license issued by the Director to any person:

1. To carry on the business of an employment agency, career counseling service, or booking agency; and/or
2. To perform, as an agent of the agency, any of the functions related to the operation of these agencies.

“Managing agent” means any individual or entity that controls, supervises, or has the responsibility to direct day-to-day operations of an employment agency or health care service firm.”

“Nurses’ registry” means any person who operates a firm which directly or indirectly procures, assigns, or supplies, or offers, arranges or attempts to procure, assign or supply temporary or permanent personnel service(s) classified as the practice of nursing, and receives or attempts to receive a payment, fee, charge or commission for such service(s). Under N.J.S.A. 34:8-43 et seq., a nurses’ registry is licensed as an employment agency.

“Performing artists” means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, whether employed or engaged individually or as a group, and athletes not under the jurisdiction of the Athletic Control Board.

“Person” means any natural person or legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestuis que trust thereof.

“Prepaid computer job matching service” means any person required to be registered under N.J.S.A. 34:8-66 who is engaged in the business of matching job seekers with employment opportunities, pursuant to an arrangement under which the job seeker is required to pay a fee in advance of, or contemporaneously with, the supplying of the matching, but which does not otherwise involve services for the procurement of employment by the person conducting the service.

“Primary location” means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under the Act.

“Principal owner” means any person who, directly or indirectly, holds a beneficial interest or ownership in an applicant or who has the ability to control an applicant.

“Product” means any tangible thing that is the result of labor or effort, thus any merchandise, object, wares, goods, commodity or item offered, directly or indirectly, for sale to the public or a job seeker.

“Registration” means a registration issued by the Director to any person:

1. To carry on the business of a consulting firm, temporary help service firm, career consulting or outplacement organization, job listing service or prepaid computer job matching service; or
2. To perform as an agent of any of the above-listed entities except for temporary help service firms and consulting firms.

“Section” means the Regulated Business Section of the Office of Consumer Protection, created as a result of the transfer of the Bureau of Employment and Personnel Services Unit and the Charities Registration Section to the Office of Consumer Protection pursuant to Reorganization Plan No. 002 of 1992.

“Service” means any act offered or rendered by a person supplying employment or personnel services or products, in order to implement the provisions of an agreement between that person and a job seeker or employer.

“Temporary employment” means employment in which the duration is fixed as some definite agreed period of time or by the occurrence of some specified event, where the jobseeker is employed by a client.

“Temporary help service firm” means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the customers’ temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals while on assignment, pays or is required to pay Federal social security taxes and State and Federal unemployment

ment insurance; carries or is required to carry worker's compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers. This definition applies to "temporary help service firm" as the term is used in both N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1.

## **SUBCHAPTER 2. EMPLOYMENT AGENCIES**

### **13:45B-2.1 Employment agency license requirements**

- (a) In order to open, conduct, or maintain an employment agency, the owner shall obtain an employment agency license by application to the Director and fulfillment of all requirements for such license. In addition to any other information the Director may require, an applicant for an employment agency license shall provide:
  - 1. The complete name, business address, and telephone number of the owner(s); if a corporation, the name, address and telephone number of its officers and directors;
  - 2. The business structure of the agency, that is, whether it is a sole proprietorship, a partnership, or a corporation; if a corporation, the state where it is incorporated;
  - 3. The name, address, and telephone number of the person who is to be contacted on any matter related to the Act or these rules;
  - 4. The type of services to be provided to the public;
  - 5. Affidavits of at least two New Jersey citizens who have known the applicant (or the chief executive officer of a corporate applicant) for at least five years, attesting to the applicant's good moral character. If an applicant finds it impossible to submit affidavits from two New Jersey citizens, the applicant may substitute affidavits of two citizens of any state who have known the applicant for at least five years. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall contain the address and the telephone number of the person signing the affidavit; and
  - 6. A disclosure statement as to whether the applicant (if a corporation, every officer and director) has ever been convicted of any crime as defined in N.J.S.A. 34:8-44a(1), (2), (3) and the nature of that crime or the equivalent under the laws of any jurisdiction.
- (b) If the employment agency provides health care services, the applicant for an employment agency license shall include the following information on the application form in addition to the information required pursuant to (a) above:

1. The name, residence and business street address, and business telephone number of each person with an ownership interest in the agency and the percentage of ownership held;
  2. The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors; and
  3. The name and address of malpractice insurance carrier and malpractice insurance policy number.
- (c) Every person, including an owner of a licensed employment agency, who places or refers jobseekers or furnishes information as to where the help or employment may be obtained, or who personally manages, operates, or carries on the business of an employment agency, shall obtain an employment agent's license by application to the Section and fulfill all requirements for such license.
- (d) The holder of an employment agency license shall be under a continuing obligation to inform the Executive Director of any change in information contained in a license or license application, such as change of address, change of ownership, change of contact person, conviction of a crime, etc.
- (e) An employment agency license may not be transferred by the licensee to another person or amended without the written consent of the Director, and payment of the total statutory annual fee by the new holder shall be required in order to effect the transfer, regardless of the date of original issuance or renewal.
- (f) The Executive Director shall act upon any application for a license within 30 days after receiving it, except that the Director may extend the maximum time for acting upon an application to 60 days for the purpose of allowing an applicant to submit additional information or if a hearing on an application is required.

### 13:45B-2.2 Posting

- (a) Each employment agency shall display its license in a prominent place where it may be easily seen and read by all persons visiting the agency.
- (b) Each person required to have an employment agent's license shall display such license in such place and manner as to make it easily seen and read by persons doing business with such licensee.
- (c) There shall be posted in each employment agency the agency's schedule of fees, as well as a certified abstract of the Act and these rules. Such posting shall be in a manner and place as to be readily seen and readable

by persons doing business with the employment agency. The employment agency shall also have full copies of the Act and these rules available for any job seeker's or employer's review. The certified abstract shall be available from the Section for a fee of \$5.00.

### 13:45B-2.3 Bond required

- (a) Before an Employment Agency License is issued, the applicant shall deposit with the Director an original bond in the sum of \$10,000, with a duly authorized surety company as surety, to be approved by the Director.
- (b) The bond shall be payable to the State of New Jersey with the condition that the person applying for the license will comply with the Act and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or caused by any violation of the Act and this chapter in carrying on the business for which the license is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in his or her name for the recovery of damages sustained by the breach.
- (c) If at any time, in the opinion of the Director, the surety on any bond shall become financially irresponsible, the person holding the license shall, upon notice by registered mail, return receipt requested from the Director, provide a new bond, subject to the provisions of this section. Failure to provide a new bond within 10 days after such notice shall operate at the direction of the Director automatically as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.
- (d) If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director, the 60 days shall begin to run on the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.
- (e) The bond shall be retained by the Section until 90 days after either the expiration or revocation of the license.

## 13:45B-2.4 Records

- (a) To effectuate the purposes of the Act, every holder of an employment agency license, as well as every representative authorized by the owner to supervise or conduct the operation of the employment agency, shall keep and maintain, readily available for inspection by the Director or the Director's duly authorized representative for a period of at least two years, the following:
1. All requests for job seekers (job orders) or applications for employment which shall include the name and address of the applicant, the date of application and the following additional information:
    - i. When the application is for employment, a reasonably accurate description of the types or classes of employment and such other facts as the applicant may wish to record;
    - ii. On the job order, the information shall include a reasonably accurate description of the job or jobs to be filled, whether the job(s) is temporary or permanent, the address or location at which the work is to be performed, the range of salary and the conditions of employment offered;
    - iii. Memorializations of applications for employment and/or job orders made by telephone or other oral communication, which shall be kept in writing on standard forms. Copies of these forms shall be filed with the Chief prior to their use by the employment agency. However, the written records of oral job orders may be kept in a book or binder used exclusively for such purpose; and
    - iv. For the purpose of convenience, there may be recorded on the application forms such additional information as is not in violation of any law of the State of New Jersey;
  2. For all advertisements published or disseminated by the employment agency:
    - i. A record containing complete information as to the date and manner of publication, with the name of the paper, periodical or other media in or through which the advertisement was published or disseminated;
    - ii. Copies of advertisements published through all media, including such items as letterheads and programs; and
    - iii. The text of any telemarketed message, the date disseminated, and the approximate number of recipients;
  3. A record of fees charged, collected, and refunded, and such accounting record as may be necessary to enable the Section to readily verify the record of fees charged, fees collected, and refunds made;

4. All correspondence concerning references of job seekers including written records of information secured by telephone or other oral communication. In cases where the job seeker applies for a position of trust or work with a family and the employer waives references, written records of such waivers shall be kept available for inspection by the Section; and
5. Copies of all contracts between job seekers or employers and the employment agency.

#### 13:45B-2.5 Agreements; fee schedules

- (a) Agreements between an employment agency and an employer or between an employment agency and a job seeker shall be in writing and shall include, but not be limited to:
  - i. The employment agency's fee schedule;
  - ii. The time at which a fee becomes due and owing to the employment agency;
  - iii. The manner in which the fee is to be paid, by whom, and at what intervals, if not paid in a lump sum; and
  - iv. The conditions under which a refund or adjustment in fee will be made, and the amount of the refund or adjustment, which may be expressed as a percentage.
- (b) All agreements and writings required to complete any transaction between an employment agency and a job seeker shall comply with the Plain Language Act, N.J.S.A. 56:12-1 et seq.
- (c) The employment agency shall provide each job seeker with an exact copy of every writing the job seeker has signed, and every document incorporated by reference in the written agreement between the employment agency and the job seeker. The employment agency shall also provide each job seeker with a receipt stating the name of the job seeker, the name and address of the employment agency and its agent, the date and amount of the fee and the purpose for which it was paid.
- (d) Upon application for licensure, an employment agency shall file with the Section a copy of the form(s) of contract used or to be used for all agreements between the employment agency and job seekers.
- (e) Every employment agency shall file with the Section for the Executive Director's approval, the employment agency's proposed schedule of fees to be charged for any service rendered or product sold to job seekers. The Executive Director, who shall respond within 14 days of receipt, shall not approve the fee schedule unless he or she is satisfied that the fee schedule is in a form which makes the schedule reasonably understandable by job

seekers and that the fee schedule is in compliance with all applicable provisions of the Act. The schedule of fees may thereafter be changed or supplemented by filing an amended or supplemental schedule with the Section. The changes shall not become effective until approval has been granted by the Executive Director and the amended or supplemental fee schedule has been posted on agency premises pursuant to N.J.A.C. 13:45B-2.2(c). The agency shall adhere to the schedule in charging for these services or products.

(f) An employment agency shall:

1. Compute fees paid by a job seeker seeking employment on the basis of permanent employment, unless the employment is temporary employment. Where temporary employment merges into permanent employment, or where a job seeker accepts permanent employment within 30 days after the termination of temporary employment, the permanent employment may be considered the result of the references to the temporary position and the fee may be based on the permanent employment with due credit given for the payment made for the temporary employment; and
2. Not accept payment of a fee or attempt to collect any fee from a job seeker for a service rendered or product sold where employment has not been accepted except:
  - i. That these requirements shall not apply to any career counseling service if that service receives no prepayment for services or products and provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for the services or products rendered. However, a career counseling service shall be licensed as an Employment Agency and shall comply with all other requirements applicable to employment agencies;
  - ii. Entertainment agencies which offer placement, directly or indirectly, to a performing artist may accept a fee if they adhere to the provisions of N.J.A.C. 13:45B-6. However, these agencies shall be licensed as an employment agency and shall comply with all other requirements applicable to employment agencies; and
  - iii. Employment agencies which offer resume services or products to a job seeker may accept a fee for these services or products if the fee for such a service or product is included on the fee schedule filed with the Section and the fee is not collected prior to the delivery of the product or service;
3. Not charge to a job seeker who obtains employment and who is discharged without cause or who voluntarily terminates employment for



just cause more than one percent of the scheduled fee for each day worked. For purposes of this subsection, the employment agency shall repay to any job seeker so discharged or terminated any excess of the maximum fee in accordance with the fee schedule, allowing three days' time to determine that the termination was not due to any fault on the part of the job seeker. The employment agency may, however, by separate written agreement between the employment agency and the job seeker, retain the fee or any part of the fee which has been paid for the job from which the job seeker has been discharged without cause or terminated, if the employment agency furnishes the job seeker with another job and allows due credit for the retained payment;

4. Not charge more than 30 percent of the scheduled fee to a job seeker who either fails to report for duty after accepting employment or voluntarily terminates employment without just cause within 30 days of commencement of employment; and
5. Obtain a bona fide order for employment prior to collecting any fee from a job seeker or sending out a job seeker to any place of employment. Except as may be otherwise provided in this chapter, no advance fee or monetary assessment of any kind shall be charged, demanded, collected, or received by the employment agency from a job seeker seeking employment until employment has been obtained by or through the efforts of the employment agency.

#### 13:45B-2.6 Employment agent's license qualifications

- (a) Before being permitted to sit for the written examination as required by the Act and by this chapter, an applicant for an employment agent's license shall submit the following to the Section. All affidavits shall include the address and telephone number of the affiant:
  1. Affidavits of the applicant and the holder of the employment agency license by whom the applicant is to be employed, and such other evidence as the Director may reasonably require, indicating that:
    - i. The applicant has, for a period of at least one year, been engaged actively, lawfully and reputably in business in the capacity of owner or employee, or in a licensed profession or occupation; and
    - ii. The applicant has, for a period of at least six months, been employed in the handling of personnel problems including the securing of help for employers and jobs for employees in the types or classes of occupations for which application is made; and
  2. Affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least one

year. If the applicant finds it impossible to submit such affidavits from two New Jersey citizens, the applicant may substitute the following:

- i. Affidavits from two citizens of any state who have known the applicant for at least one year; and
  - ii. An affidavit substantiating why it is impossible to obtain affidavits from two New Jersey citizens.
- (b) If the holder of an employment agent's license has his or her employment terminated, the licensed agency's owner shall notify the Executive Director within five business days of such termination. Upon such notification, the Executive Director shall cancel the employment agent's license held by that person; the person is nevertheless entitled to a new license for the unexpired term of the old license, upon payment of the transfer fee, if employed elsewhere by a properly-licensed employment agency owner. However, the Director may refuse to issue the new license for good cause consistent with the provisions of the Act.
- (c) The holder of an employment agent's license shall be under a continuing obligation to inform the Executive Director of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

#### 13:45B-2.7 Employment agent's conditional license qualifications

- (a) For the purpose of enabling individuals to secure experience and knowledge to qualify them as an agent, the Director may issue a conditional license authorizing the holder to perform functions requiring a license, when acting under the direct supervision of a duly qualified licensed agent.
- (b) Before being granted an agent's conditional license, an applicant shall submit the following to the Section. All affidavits shall include the address and telephone number of the affiant:
  1. An affidavit and such other evidence as the Director may reasonably require establishing that the applicant has at least one year of business experience or equivalent education;
  2. Two affidavits attesting to the applicant's good moral character, pursuant to the provisions of N.J.A.C. 13:45B-2.6(a)2;
  3. Evidence of graduation from a duly recognized high school or a Graduate Equivalency Diploma or successful passage of the written licensing examination;
  4. The name, business address and employment agency license number of the licensee who will be supervising the applicant; and

5. The name and license number of the duly licensed agent on premise who will supervise the conditional agent.
- (c) The holder of an agent's conditional license shall be under a continuing obligation to inform the Executive Director of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.
- (d) A conditional license remains effective for one year only.

### 13:45B-2.8 Identification and introductory card

- (a) The employment agency shall furnish to each job seeker who is sent to a prospective employer for an interview or for future employment in a job for which no order has been given to the agency, a company card or letterhead containing the name and address of the agency, the names of the job seeker and prospective employer, the address of the prospective employer, and any other particulars the agency may determine are necessary. On every card or letterhead, there shall be printed in bold-faced type the following:

“This card of introduction is given to (name of job seeker) with the understanding that there is no obligation to this employment agency for any fee until, as a result of the services rendered by the agency, (name of job seeker) is employed in a job with respect to which the agency received a bona fide order from an employer. (name of job seeker) has agreed to pay the fee under the foregoing conditions if the fee is not paid by an employer.”
- (b) The employment agency shall require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference.
  1. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the employment agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the employment agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the employment agency subject to examination by the Executive Director.
  2. If the employer voluntarily waives, in writing, a verification of references, the licensed employment agency shall not be required to make the verification.

## **SUBCHAPTER 3. BUSINESS LOCATIONS**

### **13:45B-3.1 Business locations; special permits**

- (a) Any building or part thereof in which an employment agency is conducted or operated shall be maintained with due regard to reasonably safeguarding such confidential information as may properly be given to the agency.
- (b) An employment agency license, or registration under N.J.S.A. 34:8-65 or 66, shall not authorize activities at any place other than the place designated in the license or registration except upon issuance of a special permit by the Director, as follows:
  - 1. Where an activity is to take place away from the premises designated in the license, application for a special permit shall be made on a form supplied by the Section, which must be received by the Section no later than seven business days before the event.
  - 2. Each separate location shall require a separate special permit.
  - 3. The fee for each special permit shall be \$10.00. A check or money order for that sum shall accompany the application.
  - 4. The special permit shall be prominently displayed in the entrance to the event in a location where it is clearly visible to all patrons.
- (c) An employment agency, or any licensed or registered person, shall not conduct business or any phase thereof, in any room or place where:
  - 1. An individual sleeps or conducts his or her household affairs, unless the business premises have separate ingress and egress from the residential premises; this provision shall not apply to persons who do not have any personal contact with either job seekers or prospective employers on their business premises; or
  - 2. Premises which are rented or leased on an hourly, daily, weekly, or other transient basis unless approved by special permit, as set forth in (b) above; this provision shall not apply to consulting firms.
- (d) The following shall apply to entertainment showcases:
  - 1. A special permit is required when the services of any performing artist are offered to the public at a specific time and location, such being known as an entertainment showcase, if the services are being offered by a person who will be accepting a fee, commission or charge when the performer books an engagement with an employer. (Only licensed booking agencies may offer this service). The permit is required whether performers appear in person or their services are offered by electronic means.

2. If services are offered by electronic means for a prospective employer in the home of the prospective employer, a special permit is not required. However, at the beginning of any electronic presentation, the name, address and license number of the entertainment agency and the name and address of this Section shall be displayed on an electronic screen for a minimum period of 20 seconds or, if any other type of electronic presentation is given, the above information shall be supplied in written form.

## **SUBCHAPTER 4. EXAMINATIONS OF VARIOUS CLASSIFICATIONS OF EMPLOYMENT AND PERSONNEL SERVICES**

### **13:45B-4.1 Examination subjects**

- (a) Each applicant for an employment agent's license shall, in the manner and at the time and place designated by the Executive Director, answer written questions concerning the following:
  1. The provisions of the Act;
  2. This chapter; and
  3. The applicant's knowledge of and experience in the fields of employment specified in the application.

### **13:45B-4.2 "Aeronautical" classification**

Applicants for an employment agent's license who include "aeronautical" in the type or class of occupation in which they intend to furnish help or employment shall furnish to the Executive Director a written statement from the Division of Aeronautics in the State Department of Transportation certifying to the Executive Director that, in the opinion of the Division of Aeronautics, the applicant has sufficient knowledge of the types of licenses required by persons to be legally engaged in the operation, maintenance or repair of aircraft.

### **13:45B-4.3 (Reserved)**

### **13:45B-4.4 (Reserved)**

### **13:45B-4.5 "Career counseling" classification**

- (a) An applicant for an employment agent's license who designates their field of employment as "career counseling" as a type or class of services which they intend to provide are persons other than those required to be registered pursuant to N.J.A.C. 13:45B-9.1 (that is, consulting firms, career consulting or outplacement organizations, and prepaid computer job matching or job listing services) and who provides or offers to provide the following services for a fee charged to the job seeker shall be classified as a career counseling agent:

1. Vocational guidance;
  2. Aptitude, achievement or vocational testing beyond measurement of single skills, such as typing;
  3. Career counseling, management, evaluation or planning;
  4. Development of resumes and other promotional materials relating to the preparation for employment;
  5. Referral services relating to employment or employment qualifications; or
  6. Executive or personnel consulting.
- (b) To be classified as a career counseling agent, an applicant shall:
1. Hold a graduate degree in counseling or in a related professional field which will ensure adequate and efficient service to clients;
  2. Have at least one year of career counseling experience under the supervision of a certified or licensed career counselor; and
  3. Pass the career counseling examination administered by the Section.
- (c) A career counseling agent shall comply with all requirements applicable to holders of an employment agent's license.

**13:45B-4.6 Temporary placement operation (functioning in conjunction with an employment agency and integrated)**

- (a) For purposes of this section, "temporary placement operation" means an operation integrated with a licensed employment agency that assigns job seekers to assist the agency's customers in handling temporary, excess, or special work loads, for a fee paid by the job seeker or the customer. A "temporary placement operation" differs from a temporary help service firm in that neither the temporary placement operation nor the employment agency with which it is integrated does any of the following things:
1. Pays a wage or salary to the employed individual;
  2. Pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;
  3. Is required to carry workers' compensation insurance covering the employed individual; or
  4. Sustains responsibility for the actions of the employed individuals while they render services to the agency's customers.
- (b) If a licensed employment agency provides temporary placement services as described in (a) above, the temporary placement operation function shall

be subject to the requirements of N.J.S.A. 34:8-43 et seq. and N.J.A.C. 13:45B-1 through 4 and 7, 8, 12 and 13, as well as this section.

- (c) Employment agencies may integrate the permanent placement and temporary placement operations, provided that:
1. In addition to the fee schedule for permanent placements, employment agencies shall submit a fee schedule for temporary placements;
  2. An employment agency shall charge the employer or the job seeker a fee based on the fee schedule the agency has submitted to the Section;
  3. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed;
  4. An employment agency is not permitted to conduct business at an unlicensed location, unless the agency holds a special permit for an activity, pursuant to N.J.A.C. 13:45B-3.1(b) and pays a fee of \$10.00 as set forth in N.J.A.C. 13:45B-7.1; and
  5. Job seekers are clearly informed in writing that a particular position is temporary or permanent.

#### **13:45B-4.7      Employment agency providing temporary help**

An employment agency providing temporary help shall comply with all requirements in this chapter that apply to employment agencies. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed.

### **SUBCHAPTER 5.      CONSULTING FIRMS**

#### **13:45B-5.1      Consulting firm providing temporary help services**

- (a) A consulting firm that provides temporary help services as defined in N.J.A.C. 13:45B-1.2 pursuant to N.J.S.A. 34:8-64g shall not be required to register as both a consulting firm and a temporary help service firm. Such firm shall annually register as, and pay the registration fee for, a consulting firm.
- (b) A consulting firm that provides temporary help services pursuant to N.J.S.A. 34:8-64g shall be required to post a bond of \$1,000 with the Attorney General to secure compliance with N.J.S.A. 56:8-1 et seq., the Consumer Fraud Act. The Director may waive such bond for any corporation or entity having a net worth of \$100,000 or greater. In order to obtain such a waiver, the

consulting firm must provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing that the firm has a net worth of \$100,000 or greater.

## **SUBCHAPTER 6. ENTERTAINMENT AGENCIES**

### **13:45B-6.1 Purpose and scope**

- (a) The rules contained in this subchapter implement the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq., and supplement rules in this chapter that govern the operation of entertainment agencies and agents, under which booking agencies and employment agencies and agents who procure, obtain, offer, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models in this State.
- (b) This subchapter shall apply to all persons, as defined in N.J.A.C. 13:45B-1.2, operating entertainment agencies located in New Jersey, or agencies wherever located that place performing artists in temporary or permanent positions located in New Jersey, or that engage in single or repeated acts of solicitation to employees or job seekers resident in New Jersey, whether by mail, newspaper, magazine, telephone, sales/TV, radio/TV, poster, billboard, or any other media, or in person.

### **13:45B-6.2 Definitions**

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Booking agency” means any person which procures, offers, promises or attempts to procure employment for performing artists or athletes not under the jurisdiction of the Athletic Control Board and which collects a fee for providing such employment; a booking agency is licensed as an employment agency.

“Booking agent” means any person, as defined in N.J.S.A. 56:8-1(d), who performs any solicitation or recruiting function for or on behalf of any booking agency; a booking agent is licensed as an employment agent.

“Entertainment” agency means a booking agency or an employment agency which procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models.

“Performing artists” means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, whether employed or engaged individually or as a group, and athletes not under the jurisdiction of the Athletic Control Board.



### 13:45B-6.3 Entertainment agency licenses; posting

- (a) In every entertainment agency operated and conducted under the Act and this chapter, the license under which the entertainment agency is conducted and operated shall be displayed in a prominent place where it may be easily seen and read by all persons visiting the entertainment agency.
- (b) Each person required to have an agent's license shall display such license in such place and manner as to make it readily visible and legible by persons doing business with such licensee.
- (c) There shall be posted in each entertainment agency the agency's schedule of fees, as well as a certified abstract of the Act and this chapter. Such posting shall be in a manner and place as to be readily visible and legible by persons doing business with the agency. The entertainment agency shall also have full copies of the Act and this chapter available for any job seeker's or employer's review. The certified abstract shall be available from the Bureau for a fee of \$5.00.

### 13:45B-6.4 Entertainment agency contracts

- (a) Each performing artist shall be supplied with a copy of any contract with the entertainment agency signed by the artist.
- (b) Each entertainment agency shall file a copy of the form(s) of any contract used or to be used by the agency with the Regulated Business Section of the Office of Consumer Protection, 124 Halsey Street, P.O. Box 45028, Newark, New Jersey 07102.
- (c) Copies of all executed contracts between the entertainment agency and performing artists shall be maintained by the agency in a form suitable for inspection by the Section. These copies shall be made available for inspection by representatives of the Section.
- (d) If the entertainment agent's contract with the performing artist includes products, such as, but not limited to, photographs or a photographic publication, the contract shall state the exact quantity, quality, and cost of the item(s) to be supplied, and the date of delivery or publication.
- (e) If date of delivery or publication is more than 60 days following the date of the contract, no more than one-third of any fee, charge or commission shall be collected by the licensed entertainment agency for its products prior to delivery.
- (f) If the entertainment agency fails to deliver products or services by the date of delivery as specified in the contract, the job seeker is entitled to a full refund of monies paid for the promised service and/or product. The job seeker may waive the right to a refund by acknowledging and waiving the right in writing.

**13:45B-6.5 Entertainment agency advertising**

- (a) All advertisements shall contain the name, address as it appears on the license, and license number of the entertainment agency.
- (b) Copies of all entertainment agency advertisements shall be maintained by the agency for two years following publication or dissemination in a form suitable for inspection by the Division, and made available for inspection by representative of the Division.
- (c) While performing the functions of an entertainment agent, a booking agent shall carry and provide to job seekers and employers a business card containing his or her license number.

**13:45B-6.6 Information required**

- (a) Information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided to the Regulated Business Section, Office of Consumer Protection, 124 Halsey Street, Newark, New Jersey 07102 (Mailing address: P.O. Box 45028, Newark, New Jersey 07101) on January 1 of each year. Where the entertainment agency begins operation after January 1, the information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided with the agency’s application. Application forms shall be supplied by the Section.
- (b) Completed forms shall be accompanied by the fee required under N.J.S.A. 34:8-50 and the bond required pursuant to N.J.S.A. 34:8-49.

**SUBCHAPTER 7. FEES AND EXPIRATION DATES**

**13:45B-7.1 Fee schedule**

The following fees shall be charged by the Office of Consumer Protection, Regulated Business Section:

Employment agency annual license .....	\$250.00
Consulting firm annual registration .....	\$175.00
Career consulting or outplacement firm annual registration .....	\$250.00
Health care service firm annual registration, each primary location .....	\$500.00
Job listing service and registration .....	\$250.00
Prepaid computer job matching service annual registration .....	\$250.00
Temporary help service firm annual registration, primary location ...	\$175.00
Temporary help service firm, permit for operation of each other location .....	\$10.00
Agent’s annual license .....	\$25.00

Agent's conditional license .....	\$25.00
Transfer of agent's license .....	\$10.00
Agent-registrants .....	\$25.00
Fee for abstract of law .....	\$5.00
Examination fee .....	\$25.00
Late fee for renewals .....	\$25.00
Special (off-premises) permit .....	\$10.00

### 13:45B-7.2 License and registration expiration

- (a) All licenses shall expire on January 1 of the year following their issuance.
- (b) All registrations shall expire on July 1 of each year.

## **SUBCHAPTER 8. OUT-OF-STATE BUSINESSES**

### 13:45B-8.1 Application

All provisions of N.J.A.C. 13:45B-1 through N.J.A.C. 13:45B-13 shall apply to any person engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq. in New Jersey including persons whose residence or principal place of business is located outside of this State.

### 13:45B-8.2 Registered agent

Each out-of-State holder of a New Jersey employment agency license, or out-of-State entity required to be registered under the Act, shall register with the Executive Director the name and address of a New Jersey agent for service of process and other matters.

## **SUBCHAPTER 9. (RESERVED)**

## **SUBCHAPTER 10. REGISTRATION FOR CONSULTING OR OUTPLACEMENT ORGANIZATIONS**

### 13:45B-10.1 Registration process

- (a) The following entities are required to be registered with the Regulated Business Section of the Office of Consumer Protection in order to operate within New Jersey:
  1. Career consulting or outplacement organizations, as defined in N.J.A.C. 13:45B-1.2, and every agent authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the organization.

- (b) An application for registration and an abstract of the law covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Section upon request.
- (c) The application form shall include, but not be limited to:
  - 1. The name and business address of each primary location of the registered service and any fictitious or trade name used;
  - 2. The category of registered service and the types of products and employment and personnel services it will offer;
  - 3. The names and home addresses of the principal owners or officers of the service; and
  - 4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service.
- (d) Upon application for registration, a prospective registrant shall file with the Section a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.
- (e) Registrants shall be under a continuing obligation to inform the Section of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.
- (f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.
- (g) Upon initial registration with the Section and annually thereafter, every career consultant or outplacement organization and every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of \$10,000 with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute

suit on the bond in their name for the recovery of damages sustained by the breach.

1. If at any time, in the opinion of the Director, the surety on any bond shall become fiscally irresponsible, the person holding the license or registration shall, upon notice from the Director, by registered mail, return receipt requested, provide a new bond, subject to the provisions of this section. The failure to provide a new bond within 10 days after such notice shall, at the direction of the Director, operate as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.
  2. If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director. The 60 days shall begin to run from the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.
  3. The bond shall be retained by the Section until 90 days after either the expiration or revocation of the registration, as appropriate.
- (h) The requirements of this section shall not apply to any person that receives no prepayment for services or products from a job seeker and that:
1. Provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for services or products rendered; or
  2. Provides outplacement services exclusively as part of a job seeker's benefit or severance package with a current or former employer.

## **SUBCHAPTER 11. PREPAID COMPUTER JOB MATCHING OR JOB LISTING SERVICES**

### **13:45B-11.1 Registration process**

- (a) The following entities are required to be registered with the Section in order to operate within New Jersey:
  1. Prepaid computer job matching or job listing services, as defined in N.J.A.C. 13:45B-1.2, and every agent authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the organization.
- (b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Section upon request.
- (c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;
  2. The category of registered service and the types of products and employment and personnel services it will offer;
  3. The names and home addresses of the principal owners or officers of the service; and
  4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service.
- (d) Upon application for registration, a prospective registrant shall file with the Section a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.
- (e) Registrants shall be under a continuing obligation to inform the Section of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.
- (f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.
- (g) Upon initial registration with the Section and annually thereafter, every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of \$10,000 and shall be subject to all bonding requirements set forth in N.J.A.C. 13:45B-10.1(g).

## **SUBCHAPTER 12. ADVERTISING AND SOLICITATIONS**

### **13:45B-12.1 Advertisements and solicitations**

- (a) All advertisements offering employment or personnel services or products shall include the advertiser's business name and address as they appear on the license or registration form of the licensed or registered firm. Advertisements for positions within the licensed or registered firm shall also include the advertiser's business name and address as they appear on the license or registration form of the firm.
- (b) No person shall misrepresent the identity of an individual or the identity of a company in an advertisement or in a personal, telephoned, telecopied, or mailed solicitation. All advertising and solicitations by any person must disclose the name of the company offering the employment services or products.
- (c) Newspaper advertising pertaining to services offered or provided in this State by career consulting or outplacement organizations appearing within or adjacent to help-wanted advertising shall contain the phrase "not an employment agency" in a clear, conspicuous, prominent manner, and in no

less than 10-point bold-face type, except that a classified advertisement shall contain the phrase in type no smaller than its text, and in all capital letters.

- (d) Any advertising or solicitation for a booking agency shall contain the name, address, and license number of the booking agency.
- (e) Copies of all advertisements and solicitations shall be maintained by the licensed or registered firm or entertainment agency in a form suitable for inspection and shall be made available for inspection by the Section for two years following publication or dissemination.
- (f) A record of all advertisements and solicitations with date and place of publication or dissemination, including identification of media used, shall be maintained in a form suitable for inspection and made available upon request of representatives of the Section for two years following publication or dissemination.
- (g) This section shall not apply to temporary help service firms or consulting firms, as defined in N.J.A.C. 13:45B-1.2.

## **SUBCHAPTER 13. VIOLATIONS**

### **13:45B-13.1 Violations**

- (a) A violation of any applicable provision of this chapter by a licensee shall be deemed to be a violation of the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq. and, if applicable, the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder.
- (b) A violation of any applicable provision of this chapter by a registrant or its agent shall be deemed to be a violation of the Bureau of Employment and Personnel Service Act, N.J.S.A. 34:8-43 et seq. and if applicable, the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder.
- (c) Nothing in this chapter shall be interpreted to prohibit prosecution of any practices by a licensee or registrant which may be unlawful under any other State or Federal law.
- (d) N.J.S.A. 34:8-52f is applicable to those firms which charge fees to job seekers, not potential employers.
- (e) Nothing in the Employment and Personnel Services Act or this chapter shall be construed to prevent qualified members of other professional groups such as members of the clergy, authorized practitioners, school guidance counselors, or psychologists from providing career counseling services consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any

title or description stating or implying that they are career counselors or are licensed to practice career counseling.

- (f) The Director may refuse to issue, and may revoke, any license or registration for failure to comply with, or violation of, the provisions of the Act and this chapter or for any other good cause shown, within the meaning and purpose of the Act and this chapter. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by the applicant or licensee or registrant. The Director may, if he or she finds it to be in the public interest, suspend a license or registration for any period of time that he or she determines to be proper or assess a penalty in lieu of suspension, or both, and may issue a new license or registration, notwithstanding the revocation of a prior license or registration, provided that he or she finds the application to have become entitled to the new license or registration.
- (g) To accomplish the objectives and carry out the duties prescribed by the Act, and this chapter the Director may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of investigation or inquiry, promulgate rules and regulations, and prescribe forms as may be necessary.
- (h) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice declared to be unlawful by the Act and this chapter, or whenever the Director believes it to be in the public interest that an investigation should be made to ascertain whether a person has engaged in, is engaging in, or is about to engage in, any unlawful practice, the Director may:
  - 1. Require the person to file, on forms prescribed by the Director, a written statement or report, under oath or otherwise, concerning the facts and circumstances regarding the practice which is under investigation;
  - 2. Examine under oath any person in connection with the practice under investigation;
  - 3. Examine any record, book, document, account, contract, or paper as he or she deems necessary; and
  - 4. Pursuant to an order of the Superior Court, impound any record, book, document, account, contract, or paper that is produced in accordance with the Act and this chapter, and retain it until the completion of all proceedings in connection with the materials produced.
- (i) Service by the Director of any notice requiring a person to file a statement or report, or of any subpoena upon the person, shall be made personally within this State, but if this cannot be done, substituted service may be made in the following manner;



1. Personal service outside this State;
  2. The mailing by registered or certified mail to the last known place of business or residence inside or outside the State of the person;
  3. As to any person other than an individual, in accordance with the Rules Governing the Courts of the State of New Jersey pertaining to service of process, provided, however, that service shall be made by the Director; or
  4. Any service as the Superior Court may direct in lieu of personal service within the State.
- (j) If a person fails or refuses to file any statement or report requested by the Director, or obey any subpoena issued by the Director, the Director may seek and obtain an order from the Superior Court:
1. Adjudging the person in contempt of court;
  2. Granting injunctive relief, without notice, restraining any and all acts and practices for which a license is required in the provisions of the Act and this chapter;
  3. Directing the payment of reasonable attorneys' fees and costs of the investigation and suit; and
  4. Granting any other relief as may be required, until the person files the statement or report, or obeys the subpoena.
- (k) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of the Act and this chapter, the Director may seek and obtain in a summary action in the Superior Court an injunction prohibiting the person from continuing the practices or engaging therein or doing any acts in furtherance thereof.
1. In addition to any other remedy, the court may: enjoin an individual from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member of any executive board of similar governing body, principal, manager, stockholder owning 10 percent or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State; vacate or annul the character of a corporation created by or under the laws of this State; revoke the certificate of authority to do business in this State of a foreign corporation; and revoke any licenses issued pursuant to law to the person of any unlawful practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practices declared to be unlawful.

- (l) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the Act and this chapter, the Director may hold hearings on the violation and upon finding the violation to have been committed, may enter an order:
  1. Directing the person to cease and desist or refrain from committing the practice in the future;
  2. Directing the person to restore any person in interest any moneys or property, real or personal, which may have been acquired by means of any unlawful practice;
  3. Assessing reasonable attorneys' fees and costs of investigation and suit; and
  4. Directing the person to reimburse the job seeker for transportation expenses if no employment of the kind applied for exists at the place to which the job seeker is sent and the person did not have a bona fide order, either oral or written, from the prospective employer.
- (m) Whenever it appears to the Director that a person against whom a cease and desist order has been entered has violated the order, the Director may bring a summary proceeding in the Superior Court based upon the violation. A person found to have violated a cease and desist order shall be liable for civil penalties in the amount of not less than \$1,000 or more than \$25,000 for each violation of the order, together with reasonable attorneys' fees and cost of investigation and suit. If any person fails to pay a civil penalty imposed by the court for violation of a cease and desist order, the court imposing the penalty is authorized, upon application of the Director, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.
- (n) In addition to any other penalty provided by law, a person which violates any of the provisions of the Act or this chapter shall be liable for a penalty of not more than \$2,000 for the first offense and not more than \$5,000 for the second and each subsequent offense.
- (o) In any action or proceeding brought under the Act or this chapter the Director may recover reasonable attorneys' fees and costs of investigation and suit.
- (p) Upon the failure of a person to comply within 10 days after service of any order of the Director directing payment of penalties, costs, attorneys' fees, reimbursement, or restoration of moneys or property, the Director may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for these payments. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, a designation of the statutes under which the payments are imposed, the amount of each payment imposed, and a listing

of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry to the docketed judgment in the Superior Court. The entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the Director.

### **13:45B-13.2 Standards for issuance and renewal of licenses and registrations**

- (a) No license or registration required by the provisions of the Act shall be issued until it has been established to the satisfaction of the Director that all of the provisions of the Act and this chapter relative to the issuance of such license or registration have been fully complied with.
- (b) Prior to any suspension, revocation or refusal to renew a license or registration, the licensee or registrant shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Rules, N.J.A.C. 1:1.

## **SUBCHAPTER 14. HEALTH CARE SERVICE FIRMS**

### **13:45B-14.1 Authority, purpose and scope**

- (a) The authority for this subchapter is derived from N.J.S.A. 34:8-43 under the definition of “employment agency.”
- (b) Firms providing health care services are licensed and/or registered under several categories pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq. In order to consolidate these firms into an appropriate category and subject all firms operating in a similar manner to uniform regulation, the Director is hereby identifying a new class of licensure: “health care service firm.”
- (c) This subchapter applies to all persons operating a health care service firm, as defined by N.J.A.C. 13:45B-14.2, including persons whose residence or principal place of business is located outside of this State.

### **13:45B-14.2 Definitions**

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

“Health care service firm” means any person who operates a firm that employs individuals directly or indirectly for the purpose of assigning the employed individuals to provide health care services either directly in the home or at a care-giving facility, and who, in addition to paying wages or salaries to the employed individuals while on assignment, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker’s compensation insurance; and sustains responsibility for the action of the employed individuals while they render health care services.

“Health care services” means:

1. Any services rendered for the purpose of maintaining or restoring an individual’s physical or mental health; or
2. Any health related services for which licensure is required as a pre-condition to the rendering of such services.

### 13:45B-14.3 Initial registration requirements

- (a) Except as set forth in N.J.A.C. 13:45B-14.4, each health care service firm shall register with the Division by submitting the following, on forms provided by the Director:
  1. A registration form which shall include the following information:
    - i. The name of the health care service firm and any fictitious or trade name used in its operation;
    - ii. Each primary location including street and street number of the building(s) and place(s) where its business is to be conducted;
    - iii. The name and residence address of each officer, director, and principal;
    - iv. The name, residence and business street address, and business telephone number of each person with an ownership interest of 10 percent or more in the agency and the percentage of ownership held; and
    - v. The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors;
  2. A certification of each officer, director, principal or owner setting forth whether he or she has ever been convicted of a crime as set forth in N.J.S.A. 34:8-44; and
  3. A bond of \$10,000 to secure compliance with P.L.1989, c. 331 (N.J.S.A. 34:8-43 et seq.). The Director may waive the bond requirement for any corporation or entity having a net worth of \$100,000 or more. In order to obtain a waiver, the health care service firm shall provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing a net worth of \$100,000 or greater.
- (b) A health care service firm shall provide the information set forth in (a)iv and v above prior to any change in ownership or management.

- (c) If any information required to be included on the application changes, the health care service firm shall provide that information to the Section, in writing, within 30 calendar days of the change.
- (d) In the event an officer, director, principal or owner is convicted of a crime subsequent to filing the affidavit required by (a) above, the health care service firm shall obtain a new affidavit from that individual and shall file the affidavit with the Section within 30 days of the conviction.

#### 13:45B-14.4 Firms registered prior to April 3, 1995 and meeting the definition of health care service firm

- (a) A firm registered prior to April 3, 1995 and meeting the definition of a health care service firm shall not be required to comply with the initial registration requirements of N.J.A.C. 13:45B-14.3(a)1 and 2. Such entity shall, however, comply with the provisions of N.J.A.C. 13:45B-14.3(a)3 by ensuring that it has filed a \$10,000 bond with the Director, unless the Director has waived the bond requirement for the reasons set forth therein.
- (b) The firm shall return the old certificate of registration to the Division by May 3, 1995. The Division will issue a new certificate within 15 days after receipt of the old certificate.

#### 13:45B-14.5 Registration renewal

- (a) A health care service firm shall renew registration on or prior to July 1 of each year by submitting the following, on forms provided by the Director.
  - 1. A renewal application which shall provide the information set forth in N.J.A.C. 13:45B-14.3(a)1 above: a certification that no new principals or owners have been added since the previous renewal; and a list of primary locations.
  - 2. A \$10,000 bond, unless the health care service firm has a perpetual bond or the Director has waived the bond requirement for the reasons set forth in N.J.A.C. 13:45B-14.3(a)3.

#### 13:45B-14.6 Prohibited acts

- (a) A health care service firm shall not:
  - 1. Provide or offer to provide health care services without first obtaining a registration;
  - 2. Charge a fee or a liquidated damage charge to any individual employed by the health care service or in connection with employment by the firm. If a fee or liquidated damage charge is imposed, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2;

3. Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person. If the health care service firm charges an individual pursuant to such contract a fee when the individual becomes employed by any other person, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2; or
4. Knowingly send individuals it employs to, or knowingly continue to render services to, any health care facility not under the jurisdiction of the National Labor Relations Board where a strike or lockout is in progress, for the purpose of replacing individuals who are striking or who are locked out.

## **SUBCHAPTER 15. PLACEMENT OF HEALTH CARE PRACTITIONERS**

### **13:45B-15.1 Definitions**

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

“Agency” means a health care service firm as defined in N.J.A.C. 13:45B- 14.2 or an employment agency licensed pursuant to N.J.S.A. 34:8-47 and 48 and operating as a nurses’ registry. Agency also means any holder of an employment agency license who places or employs a health care practitioner.

“Health care practitioner” means an individual placed or employed by an agency for the purpose of rendering health care services, as defined in N.J.A.C. 13:45B-14.2, to an individual. Health care practitioner shall include, but not be limited to, an acupuncturist, athletic trainer, chiropractor, dentist, marriage counsellor, optometrist, orthotist, prosthetist, pharmacist, physician assistant, physician or surgeon, physical, occupational or speech therapist, podiatrist, psychologist, registered nurse, licensed practical nurse, nurse practitioner, a home health aide, or a nurse’s aide, respiratory therapist or social worker. The term shall also include an individual placed by an agency for the purpose of rendering health care services where a license under State law is not required.

“Health care practitioner supervisor” means a New Jersey licensed physician, or a registered nurse in good standing holding a Bachelor of Science degree in nursing and two years combined public health nursing and progressive professional responsibilities in public health nursing; or three years combined public health nursing and progressive professional responsibilities in public health nursing.

“Home care setting” means the personal residence of a patient receiving services of a health care practitioner.

“Licensed” means holding any certification, registration or license required by law as a precondition to the practice of a regulated profession or occupation.

### 13:45B-15.2 Application form; minimum information required

(a) An agency shall create an application form for each applicant seeking placement or employment by or through the agency. The application form shall require the following minimum information:

1. The applicant's name, address and telephone number;
2. The applicant's Social Security Number;
3. The type of license held (R.N., L.P.N., H.H.A., N.A.);
4. The license-issuing authority or board;
5. The license number;
6. The license expiration date;
7. The names and addresses of all institutions, patients and agencies worked for within the one year period preceding the date of application, a statement of reasons for leaving each employer and the name(s) of all supervisors having knowledge of the applicant's performance at each location. If the applicant has been employed by more than five employers within the stated one year period, the applicant shall be required to disclose only the five employers immediately preceding the date of application;
8. Areas of actual working experience and period of time during which experience was acquired (for example, I.C.U.--one year, med surg--one year, private residence--one year);
9. The applicant's education (diplomas/degrees held);
10. The applicant's malpractice insurance carrier (name and address), where applicable; and
11. The applicant's malpractice insurance policy number, where applicable.

(c) An application form shall contain the following duly executed authorization:

I, \_\_\_\_\_ (Applicant) \_\_\_\_\_, hereby authorize \_\_\_\_\_ (agency) \_\_\_\_\_ to request and receive from all prior employers within one year of the date of this application, any and all pertinent information concerning my prior employment and its termination, including the reasons for such termination.

### 13:45B-15.3 General duties

(a) An agency shall comply with accepted professional standards and principles that apply to furnishing services to be provided by health care practitioners.

- (b) An agency shall comply with all Federal, State and local laws and shall not direct, request, condone or aid or abet any health care practitioner in the performance of an unlawful act.
- (c) An agency shall employ not less than one health care practitioner supervisor who shall be licensed as an employment agent, provided, however, that a health care service firm may employ a health care practitioner supervisor who need not be licensed as an employment agent.
- (d) The agency with the assistance of the health care practitioner supervisor shall be responsible for establishing such practices and procedures as may be necessary to assure the agency's compliance with this subchapter.
- (e) An agency shall not submit, record or convey to another agency information which the agency knows or has reason to know is false, deceptive or misleading.
- (f) An agency shall make available for inspection by the Executive Director of the Office of Consumer Protection, or by his or her designated agent, any book, record or account required by law, including these regulations, to be made, maintained or kept.
- (g) An agency shall retain all records required to be maintained by this regulation for a period of seven years from the date on which the record is required to be made.
- (h) An agency shall either maintain, or ensure the existence of, a general liability insurance policy which shall insure against any placed health care practitioner's negligence, malpractice or any other unlawful conduct occurring within the scope of the health care practitioner's placement. The policy shall be in the amount of not less than \$1,000,000.
- (i) An agency shall, upon receipt of a duly authorized release, provide to another agency a copy of all mandated testing and immunization results for the health care practitioner.
- (j) The agency and the health care practitioner supervisor shall immediately report any violation of this subchapter to the Executive Director of the Office of Consumer Protection.
- (k) The agency and the health care practitioner shall cooperate in providing information to any investigation conducted to determine whether a violation of this subchapter or any applicable statute has occurred.
- (l) An agency's failure to comply with this subchapter may be deemed good cause within the meaning of N.J.S.A. 34:8-53, upon notice to the agency and an opportunity to be heard, for the suspension or revocation of licensure or for such other relief or sanctions as may be authorized by law.



### 13:45B-15.4 Duty to refer only licensed individuals

- (a) When licensure to perform a health care service or function is required by law, an agency shall refer or place only those health care practitioners who are currently licensed or certified and in good standing with their respective New Jersey licensing or registration boards.
- (b) A nurses' registry shall not furnish broker services to anyone other than a registered nurse, a practical nurse, or a nurse practitioner/clinical nurse specialist licensed by the State Board of Nursing.
- (c) The agency shall, through its health care practitioner supervisor or other designated individual, verify the license status of each individual to be placed or referred prior to the referral or placement. Licensure shall be verified only by personally inspecting the original of the current biennial registration or license issued to the individual to be referred or placed.
- (d) The agency shall maintain a copy of the license or registration with the following notation conspicuously written across the entire face of the license: "COPY OF ORIGINAL NOT VALID FOR VERIFYING CURRENT LICENSURE STATUS."
- (e) The agency shall maintain a record of licensure verification in which the following information is recorded:
  - 1. The registrant's name and address;
  - 2. The New Jersey board or agency issuing license or registration;
  - 3. The license or registration number;
  - 4. The period for which licensure or registration was issued;
  - 5. The date of license inspection; and
  - 6. The name of the individual making the inspection on behalf of the licensee.
- (f) When the agency knows or has reason to know that the license of any health care practitioner placed or referred has been suspended, revoked or otherwise limited or restricted so as to preclude the rendering of the health care service for which employment or placement was intended, the agency shall verify the licensure status at the earliest possible time. Upon a determination that the license has been suspended, revoked or otherwise limited or restricted, the agency shall directly terminate the health care practitioner's employment and notify the individual or entity currently receiving services from the health care practitioner that the practitioner's authority to practice has been suspended or revoked.

### 13:45B-15.5 Duty to match credentials to need

- (a) An agency shall make diligent inquiry of employers and applicants for employment in order to ascertain the relevant needs of the place of employment and the applicant's qualifications. An agency shall not place or refer an applicant whose qualifications do not reasonably match the needs and requirements of an employer.
- (b) An agency shall create a job order for every position, or type of position within a single institution, for which a referral or placement is to be made. The following minimum information shall be entered on the job order:
  - 1. A description of setting (for example, pediatrics, I.C.U., C.C.U., med-surg, home/residence of client);
  - 2. The hours to be worked;
  - 3. The title of position (for example, supervising nurse, staff nurse, charge nurse, clinical specialist);
  - 4. Duties;
  - 5. Special skills or certifications required;
  - 6. Special equipment to be operated; and
  - 7. Special employer policies or limitations to be required.

### 13:45B-15.6 Duty to verify work history

- (a) Prior to placing or referring an applicant, an agency shall:
  - 1. Verify the applicant's work history by confirming employment at all disclosed employment locations for the one year period prior to the date of the application; and
  - 2. Inquire of all employers disclosed on the application form the reason for any termination, resignation or cessation of employment.
- (b) The agency shall record the information required by (a) above and the name and title of the individual providing the information.

### 13:45B-15.7 (Reserved)

### 13:45B-15.8 (Reserved)

### 13:45B-15.9 Duties relating to placements in home care settings

- (a) Prior to referring or placing a health care practitioner in a home care setting, an agency shall assure that an appropriately licensed person evaluates the patient's needs and establishes, in writing, a plan of care. The health care practitioner preparing the plan of care shall sign it and indicate thereon his or her license designation.

- (b) An agency shall make referrals or placements consistent with the level of care indicated in the plan of care.
- (c) Unless the circumstances of the patient's care or another specific regulatory standard requires otherwise, the health care practitioner supervisor shall, not less than once during each 30-day period during which the health care practitioner is rendering services in the home care setting:
  - 1. Inquire of the health care practitioner and such other persons as may be necessary whether the plan of care is adequate to meet the patient's needs; and
  - 2. Make reasonable inquiry to determine whether the plan of care is being discharged appropriately by the health care practitioner.
- (d) The health care practitioner supervisor shall record the responses received.
- (e) If the responses indicate that the plan of care needs to be reassessed or revised, the health care practitioner supervisor shall ensure that an appropriately licensed person immediately reassesses or revises the plan.
- (f) If the responses indicate that the health care practitioner is not discharging the plan of care appropriately, the agency shall immediately take necessary corrective action.
- (g) The health care practitioner supervisor shall make an on-site, in home evaluation of the plan of care not less than once during each 60 day period during which the agency has placed or referred a health care practitioner in the home care setting.
- (h) The agency shall maintain the original of the plan of care and any revised plan of care and shall give copies to the patient or the patient's representative.

# New Jersey Administrative Code

## Title 13, Chapter 45

### Uniform Regulations

#### **SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS**

##### **13:45C-1.1 Definition of “licensee”**

- (a) For the purpose of this subchapter, “licensee” shall mean any licensee, permittee or registrant of:
1. The Division of Consumer Affairs;
  2. Any professional or occupational licensing board, or any committee, or other sub-agency thereof located within the Division;
  3. The Division of Consumer Affairs, Office of Consumer Protection, Regulated, Business Section (Employment Agencies and Temporary Help Service Firms) pursuant to N.J.S.A. 34:8-24 et seq.; or
  4. The Legalized Games of Chance Control Commission.

##### **13:45C-1.2 Licensee’s duty to cooperate in investigative inquiries**

A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee’s licensing agency into a licensee’s conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions. A licensee’s failure to cooperate, absent good cause or *bona fide* claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency’s enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency’s enabling act.

##### **13:45C-1.3 Specific conduct deemed failure to cooperate**

- (a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct or other good cause or grounds for suspension or revocation of licensure:
1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct.
  2. The failure to timely provide records related to licensee conduct.
  3. The failure to attend any scheduled proceeding at which the licensee’s appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it

shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefore, shall not require an adjournment of the proceeding.

4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession.
5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a *bona fide* claim of privilege.
6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law.
7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

#### **13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct**

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

#### **13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings**

In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage counselor-client privilege, professional counselor-client privilege, associate counselor-client privilege and the social worker-client privilege shall be unavailable. Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

- (a) Any statements, records or other information acquired which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:
  - 1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;
  - 2. The professional or occupational licensing board or the committee or other sub-agency of the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or
  - 3. A Deputy Attorney General
- (b) Except as may be otherwise ordered as provided in this subchapter, access to the statements, records or other information shall be afforded only to employees of the Attorney General, the Enforcement Bureau, or the board or other sub-agency of the Division having a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain.
- (c) The statements, records or other information shall be retained only for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they shall be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information shall be returned to the patient, where appropriate.